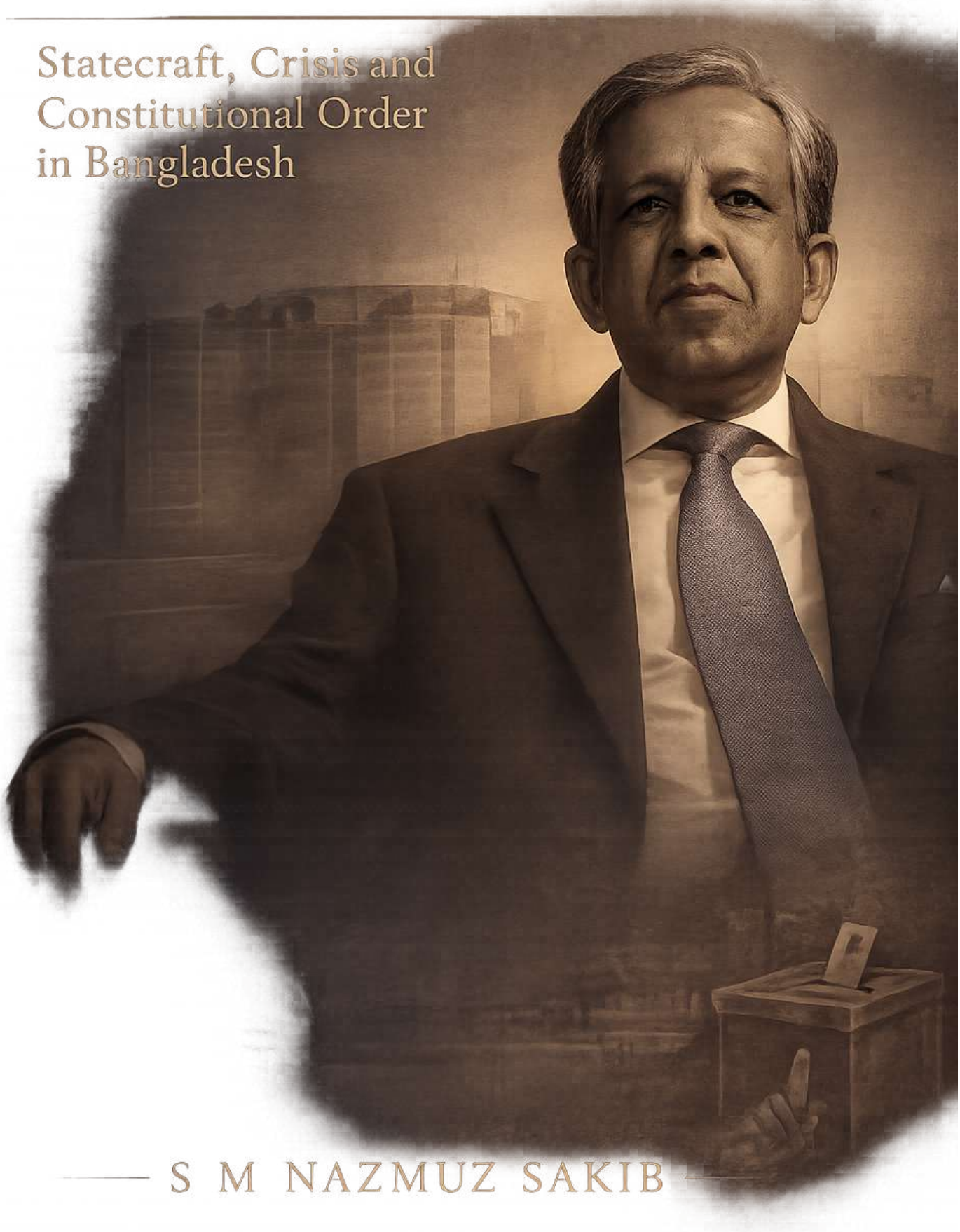
BIOGRAPHY of

Fakhruddin Ahmed

Statecraft, Crisis and Constitutional Order in Bangladesh



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Biography of Fakhruddin Ahmed: Statecraft, Crisis And Constitutional Order In Bangladesh

S M Nazmuz Sakib

Contents

Copyright Page 13

PART ONE: ORIGINS, INTELLECT, CRISIS, AND CONSTITUTIONAL PHILOSOPHY 14

FOREWORD TO PART ONE 14

CHAPTER ONE: THE WORLD THAT MADE THE MAN: BENGAL, PARTITION, AND THE INTELLECTUAL FORMATION OF FAKHRUDDIN AHMED 15

1.1 A Child of Two Worlds: Birth in a Transitional Bengal 15

1.2 Bengal's Partition and Its Consequences: The World Transformed 15

1.3 Academic Excellence as Political Statement: Dhaka University and the Bengali Intelligentsia 16

1.4 The Philosophical Foundations: Economics as Moral Science 18

1.5 The Civil Service Years: Understanding the State from Within 19

1.6 The World Bank Years: Development Theory in Global Practice 20

CHAPTER TWO: THE CONSTITUTIONAL ARCHITECTURE: BANGLADESH'S FUNDAMENTAL LAW AND ITS TENSIONS 21

2.1 The Constitution of Bangladesh: A Document Born in Struggle 21

2.2 Parliamentary Democracy and Its Structural Tensions 22

2.3 The Genesis of the Caretaker Government System: A Constitutional Innovation 23

2.4 Constitutional Theory and the Problem of Constituent Power 24

2.5 The Basic Structure Doctrine: Protecting Constitutional Fundamentals 26

2.6 Emergency Powers Theory: State of Exception and Its Philosophical Implications 27

CHAPTER THREE: THE MAKING OF THE CRISIS: POLITICAL POLARIZATION AND INSTITUTIONAL FAILURE, 1991-2006 28

3.1 The Restoration of Democracy in 1991: Promise and Limitation 28

3.2 The Election Crisis of 1994-1996 and the Birth of the Caretaker System 29

3.3 The Seeds of Disaster: The BNP Government of 2001-2006 30

3.4 The Electoral System and the Architecture of Manipulation 31

3.5 The Manipulation of the Caretaker System: The Chief Justice Controversy 32

3.6 The Slide into Anarchy: Late 2006 32

CHAPTER FOUR: THE MOMENT OF APPOINTMENT: JANUARY 2007 AND THE JURISPRUDENCE OF NECESSITY 33

4.1 The Military's Move: The Night of 11 January 2007 33

4.2 Constitutional Validity and the Problem of Legitimacy 34

4.3 The Theory of Technocratic Governance: Expertise, Neutrality, and Democratic Legitimacy 36

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4.4 International Dimensions: The Role of Foreign Powers in the 1/11 Transition 37
CHAPTER FIVE: FAKHRUDDIN AHMED AS CHIEF ADVISER: THE PHILOSOPHY AND PRACTICE OF TRANSITION 39
5.1 The Mandate and Its Interpretation: What Could the Chief Adviser Do? 39
5.2 The Anti-Corruption Campaign: Philosophical Dimensions 40
5.3 Institutional Reform: The Separation of the Judiciary 41
5.4 The National Identity Card System and Electoral Reform 42
5.5 Economic Management During the Caretaker Period 43
5.6 The Question of Exit: When and How to Return to Democracy 44
CHAPTER SIX: THEORETICAL FRAMEWORKS FOR UNDERSTANDING INTERIM GOVERNANCE 45
6.1 The Literature on Transitional Governance: Cross-National Perspectives 45
6.2 Consolidated and Defective Democracies: Wolfgang Merkel's Framework 45
6.3 Transitional Justice and the Limits of Anti-Corruption Prosecution 46
6.4 The Habitual Constitutionalism Problem: Bangladesh's Constitutional Culture 47
6.5 Robert Dahl's Polyarchy and the Conditions for Democratic Governance 48
6.6 Social Contract Theory and the Legitimacy of the Caretaker System 48
CHAPTER SEVEN: FAKHRUDDIN AHMED'S INTELLECTUAL LEGACY AND THE THEORY OF TECHNOCRATIC CARETAKING 49
7.1 The Economist as Statesman: The Intersection of Technical Knowledge and Political Leadership 50
7.2 The Princeton Legacy: Development Economics and Institutional Theory 51
7.3 The Bangladesh Bank Experience: Financial Regulation as Preparation for Statecraft 52
7.4 The World Bank Frame: International Development Norms and Domestic Governance 52
CHAPTER EIGHT: THE CARETAKER GOVERNMENT SYSTEM: COMPARATIVE CONSTITUTIONAL ANALYSIS 53
8.1 Comparative Perspectives on Electoral Management Bodies 53
8.2 Historical Precedents: Caretaker and Transitional Governance Mechanisms 54
8.3 Constitutional Moments and Constitutional Change: Ackerman's Framework 55
8.4 The Separation of Powers and Its Distortions in Bangladesh 56
CHAPTER NINE: THE ANTI-CORRUPTION PHILOSOPHY: LEGAL THEORIES AND PRACTICAL REALITIES 57
9.1 Corruption as a Constitutional Problem: Theoretical Frameworks 57
9.2 The Anti-Corruption Commission: Institutional Design and Performance 58
9.3 The Corruption-Development Nexus: Empirical and Theoretical Dimensions 58
CHAPTER TEN: THE DECEMBER 2008 ELECTIONS: DEMOCRATIC TRANSITION AND ITS ASSESSMENT 60

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10.1 The Organization of Elections: Technical and Political Dimensions 60
10.2 The Election Results and Their Constitutional Significance 60
10.3 The Post-Caretaker Period: Fakhruddin Ahmed's Withdrawal from Public Life 61
CHAPTER ELEVEN: THE CONSTITUTIONAL LEGACY: FROM 2009 TO 2026 62
11.1 The 15th Amendment and the Betrayal of Democratic Promise 62
11.2 The August 2024 Uprising and the Reinvention of Constitutional Legitimacy 63
11.3 The Theoretical Legacy: Constituent Power and Democratic Legitimacy in Contemporary Bangladesh 63
CHAPTER TWELVE: SYNTHESIZING THE LEGACY: FAKHRUDDIN AHMED IN HISTORICAL AND THEORETICAL PERSPECTIVE 64
12.1 The Man in the Moment: Historical Assessment 64
12.2 The Intellectual Contribution: Technocracy, Development, and Democratic Theory 65
12.3 The Unfinished Revolution: Bangladesh's Constitutional Future 66
PREFATORY REMARKS ON THE STRUCTURE OF REMAINING PARTS 67
FURTHER READING AND BIBLIOGRAPHY FOR PART ONE 68
Key Sources 68
Bangladesh-Specific Sources 68
Constitutional and Legal Sources 69
PART TWO: THE ECONOMICS OF REFORM, FINANCE, AND DEVELOPMENT 70
Volume Two: The Economist in Power: From Central Banking to Statecraft 70
FOREWORD TO PART TWO 70
CHAPTER THIRTEEN: THE THEORY AND PRACTICE OF CENTRAL BANKING IN DEVELOPING COUNTRIES 71
13.1 What Central Banks Do: Functions, Instruments, and Objectives 71
13.2 The History of Bangladesh Bank Before Fakhruddin Ahmed: Institutional Challenges 72
13.3 Fakhruddin Ahmed as Bangladesh Bank Governor: The Reform Agenda 73
13.4 The Exchange Rate Reform: Theory and Practice 74
13.5 Financial Sector Reform: Corporate Governance and Banking Regulation 76
13.6 The Bond Market and Securitization: Building Financial Market Infrastructure 77
13.7 The Political Economy of Central Bank Independence 78
CHAPTER FOURTEEN: THE MICROFINANCE DIMENSION: PKSF, POVERTY, AND THE THEORY OF FINANCIAL INCLUSION 79
14.1 The Global Microfinance Revolution and Bangladesh's Role 79

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14.2 PKSF: An Institutional Innovation in Development Finance 80
14.3 The Theory of Microfinance: Credit Market Failures and the Poor 81
14.4 The Debate About Microfinance Effectiveness: Evidence and Controversy 82
14.5 Microfinance and Women's Empowerment: The Feminist Political Economy Dimension 83
14.6 The Ultra-Poor and the Limits of Microfinance 84
14.7 The Princeton Legacy Revisited: Development Economics and Poverty Theory 85
CHAPTER FIFTEEN: MACROECONOMIC MANAGEMENT DURING THE CARETAKER PERIOD, 2007-2009 ... 87
15.1 The Economic Inheritance: Strengths and Vulnerabilities 87
15.2 The Food and Fuel Price Crisis: Managing External Shocks 88
15.3 Fiscal Policy During the Caretaker Period: Discipline and Development 89
15.4 The Macroeconomics of Transition: Growth, Investment, and Economic Confidence 90
15.5 The Ready-Made Garment Sector: Engine of Growth and Social Transformation 91
15.6 Banking Sector Reform Continued: NPLs, Governance, and Financial Stability 92
CHAPTER SIXTEEN: BANGLADESH'S DEVELOPMENT TRAJECTORY: FROM THE CARETAKER PERIOD TO 2026 93
16.1 The Continuity and Change in Bangladesh's Economic Story 93
16.2 The August 2024 Uprising and Economic Aftermath 93
16.3 What Bangladesh's Development Story Teaches: Lessons for Development Theory 94
16.4 The Washington Consensus and Beyond: Evolution of Development Thinking 95
16.5 The Political Economy of Economic Reform: Theory and Bangladesh Evidence 96
CHAPTER SEVENTEEN: THE ECONOMICS OF DEMOCRATIC CONSOLIDATION: THEORY, EVIDENCE, AND BANGLADESHI IMPLICATIONS 97
17.1 Does Democracy Cause Development? The Political Economy of Growth 97
17.2 Technocracy and Democracy Revisited: Reconsidering the Tension 98
17.3 Financial Inclusion and the Future: Connecting the PKSF Legacy to 2026 99
17.4 The Fiscal Challenge: Revenue Mobilization and Development Finance 100
17.5 Infrastructure, Energy, and the Structural Transformation of Bangladesh's Economy 101
CHAPTER EIGHTEEN: SYNTHESIZING THE ECONOMIC LEGACY: FAKHRUDDIN AHMED AS DEVELOPMENT ECONOMIST AND STATESMAN 101
18.1 The Coherence of an Economic Career 101
18.2 The Intellectual Interlude: The Williams College Connection 102
18.3 The World Bank Formation: Development Orthodoxy and Heterodox Pressures 103

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18.4 The Economic Philosophy of Pragmatic Institutionalism 104
18.5 Connecting the Economic and Constitutional Legacies 104
PREFATORY REMARKS ON PARTS THREE, FOUR, AND FIVE 105
PART THREE: THE LAW IN CRISIS: CONSTITUTIONAL FRAMEWORK, EMERGENCY POWERS, AND LEGISLATIVE ARCHITECTURE OF THE CARETAKER PERIOD 108
FOREWORD TO PART THREE 108
CHAPTER NINETEEN: THE THIRTEENTH AMENDMENT AND THE CONSTITUTIONAL ARCHITECTURE OF NON-PARTY CARETAKER GOVERNMENT 109
19.1 The Origins of the Caretaker Concept: Political Necessity and Constitutional Innovation 109
19.2 The Jurisprudential Foundations: Neutrality, Accountability, and Constitutional Structure 111
19.3 The Thirteenth Amendment in Practice: The 1996, 2001, and 2006 Elections 112
19.4 The Constitutional Status of the Fakhruddin Government: Legality and Legitimacy Contested 114
CHAPTER TWENTY: THE EMERGENCY POWERS REGIME: LEGAL ARCHITECTURE, CONSTITUTIONAL FOUNDATIONS, AND COMPARATIVE PERSPECTIVES 115
20.1 Emergency Powers in Constitutional Theory: The State of Exception 115
20.2 The Emergency Powers Ordinances: Legislative Activity Under Emergency Conditions 116
20.3 The Emergency Powers Regulations: Detention, Search, and the Suspension of Ordinary Rights 118
20.4 The Judiciary During the Emergency: Institutional Response and Constitutional Tension 119
CHAPTER TWENTY-ONE: THE ANTI-CORRUPTION LEGAL FRAMEWORK: THE ANTI-CORRUPTION COMMISSION, SPECIAL COURTS, AND THE POLITICS OF LEGAL ACCOUNTABILITY 120
21.1 The Historical Background: Corruption as Constitutional Crisis 120
21.2 The Anti-Corruption Commission: Legal Architecture and Institutional Design 121
21.3 The Anti-Corruption Campaign: Notable Prosecutions and Their Jurisprudential Implications 122
21.4 The Legacy of the Anti-Corruption Campaign: Institutional Reform vs. Political Theatre 123
CHAPTER TWENTY-TWO: THE BENGAL AND BANGLADESH LEGAL TRADITION: COLONIAL INHERITANCE AND POST-COLONIAL EVOLUTION 124
22.1 The Common Law in Bengal: Historical Foundations 124
22.2 The Constitutional History of Bengal: From Dyarchy to Independence 125
22.3 Post-Independence Legal Development: The Bangladesh Legal Order 126
22.4 The Masdar Hossain Case and Judicial Separation: Legal Precedent for the Fakhruddin Reform 127
CHAPTER TWENTY-THREE: COMPARATIVE CONSTITUTIONAL LAW AND TRANSITIONAL JUSTICE: INTERNATIONAL PERSPECTIVES ON THE CARETAKER PERIOD 129

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23.1 Comparative Constitutional Frameworks for Caretaker Governance 129
23.2 Transitional Justice and the Anti-Corruption Campaign: International Comparisons 130
23.3 The Indian Experience: Judicial Activism and Constitutional Development 131
23.4 The South African Constitutional Court and Transformative Constitutionalism 132
CHAPTER TWENTY-FOUR: THE ELECTORAL LAWS AND ELECTION COMMISSION REFORM: LEGAL ARCHITECTURE FOR DEMOCRATIC TRANSITION 134
24.1 The Electoral Legal Framework: Constitutional Provisions and Statutory Architecture 134
24.2 The Election Commission: Constitutional Independence and Practical Constraints 135
24.3 Electoral Law Reform: The Representation of the People Order and its Amendments 136
24.4 The International Observation Framework: Standards and Their Application 137
CHAPTER TWENTY-FIVE: THE ORDINANCE-MAKING POWER: LEGISLATIVE THEORY, CONSTITUTIONAL LIMITS, AND THE FAKHRUDDIN RECORD 138
25.1 The Constitutional Framework for Ordinance-Making 138
25.2 The Specific Ordinances: Analysis of Key Legislative Instruments 139
25.3 Legislative Theory and the Unelected Legislator: Philosophical Foundations 140
CHAPTER TWENTY-SIX: THE POLITICAL PARTY REFORM AGENDA: CONSTITUTIONAL DIMENSIONS AND JURISPRUDENTIAL DEBATES 141
26.1 Political Parties in Constitutional Theory 141
26.2 The Minus-Two Formula: Political Engineering and Its Legal Complications 142
26.3 Civil Society and Democratic Participation: The Role of Non-Governmental Organizations 143
CHAPTER TWENTY-SEVEN: THE CONSTITUTIONAL JURISPRUDENCE OF 2007 TO 2008: COURTS, EMERGENCY, AND CONSTITUTIONAL REVIEW 144
27.1 The High Court Division During the Emergency: Institutional Behavior and Constitutional Dynamics 144
27.2 Key Constitutional Cases During the Caretaker Period 145
27.3 The Doctrine of Necessity and Its Application 146
CHAPTER TWENTY-EIGHT: THE NOVEMBER 2025 JUDGMENT AND THE MARCH 2026 FULL VERDICT: RETROSPECTIVE CONSTITUTIONAL ADJUDICATION 147
28.1 The Supreme Court Returns: Reviewing the 2011 Decision 147
28.2 The Basic Structure Doctrine Reaffirmed: Free Elections as a Constitutional Fundamental 148
28.3 Prospective Application and the Problem of Constitutional Timing 149
28.4 Implications for the Legacy of the Fakhruddin Period 150

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CHAPTER TWENTY-NINE: INTERNATIONAL LAW DIMENSIONS: HUMAN RIGHTS, SOVEREIGNTY, AND THE INTERNATIONAL FRAMEWORK FOR TRANSITIONAL GOVERNANCE 150
29.1 The International Human Rights Framework and the Emergency Period 150
29.2 The Role of International Financial Institutions: The IMF, World Bank, and Governance Conditionality 151
29.3 The United Nations and Electoral Standards: Norm Development and Implementation 152
CHAPTER THIRTY: THE CONSTITUTIONAL REFORM LEGACY: FROM THE FAKHRUDDIN PERIOD TO THE JULY CHARTER 153
30.1 The Constitutional Reform Commissions of 2024 to 2025: Continuity and Innovation 153
30.2 The July National Charter: Constitutional Consensus and Institutional Design 154
30.3 The February 2026 Elections and Referendum: Assessing the Constitutional Transition 155
30.4 Remaining Constitutional Challenges: From Legacy to Future 156
CHAPTER THIRTY-ONE: PHILOSOPHICAL SYNTHESIS: LEGITIMACY, LAW, AND THE PROBLEM OF CONSTITUTIONAL CRISIS 157
31.1 The Jurisprudential Problem of Legitimacy in Constitutional Crisis 157
31.2 The Tension Between Democracy and Constitutionalism: The Bangladesh Case 158
31.3 The Technocratic Paradox: Expertise, Democracy, and Legitimate Governance 159
31.4 Conclusion: The Fakhruddin Period in Constitutional History 160
SELECTED BIBLIOGRAPHY FOR PART THREE 161
PART FOUR: COMPARATIVE CONSTITUTIONAL FRAMEWORKS, DEMOCRATIC TRANSITIONS, AND THE INTERNATIONAL DIMENSIONS OF THE FAKHRUDDIN PERIOD 164
FOREWORD TO PART FOUR 164
CHAPTER THIRTY-TWO: TRANSITIONAL GOVERNANCE IN COMPARATIVE PERSPECTIVE: THEORETICAL FRAMEWORKS AND TYPOLOGIES 165
32.1 Defining Transitional Governance: The Spectrum from Caretaker to Transitional Administration 165
32.2 The Theory of Democratic Consolidation: What Does It Require? 166
32.3 Democratic Backsliding and Competitive Authoritarianism: Theoretical Context 167
CHAPTER THIRTY-THREE: THE PAKISTANI EXPERIENCE: CARETAKER GOVERNMENT, MILITARY INTERVENTION, AND THE RECURRING CONSTITUTIONAL CRISIS 168
33.1 Pakistan's Constitutional History: The Deep Structure of Instability 168
33.2 The Doctrine of Necessity in Pakistani Constitutional Law: Implications for Bangladesh 169
33.3 Pakistan's Anti-Corruption Experience: Accountability Courts and Their Limitations 170

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CHAPTER THIRTY-FOUR: SRI LANKA'S CONSTITUTIONAL EXPERIENCE: ETHNIC CONFLICT, CONSTITUTIONAL DESIGN, AND GOVERNANCE FAILURE 171
34.1 Sri Lanka's Constitutional History: From Westminster to Executive Presidency 171
34.2 Sri Lanka's 2022 Crisis: Popular Uprising and Constitutional Response 173
34.3 The Ethnic Accommodation Problem: Comparative Constitutional Perspectives 174
CHAPTER THIRTY-FIVE: NEPAL'S CONSTITUTIONAL TRANSITION: PEACE PROCESS, FEDERALISM, AND THE CHALLENGES OF DEMOCRATIC CONSOLIDATION 175
35.1 Nepal's Post-Conflict Constitutional Making: A Decade of Transformation 175
35.2 Nepal's 2025 Interim Government: A Direct Contemporary Parallel 176
35.3 Constitution-Making in Post-Conflict and Post-Crisis Societies: Lessons and Pitfalls 177
CHAPTER THIRTY-SIX: THE LATIN AMERICAN EXPERIENCE: DEMOCRATIC CONSOLIDATION, ANTI-CORRUPTION CAMPAIGNS, AND JUDICIAL INDEPENDENCE 178
36.1 Brazil, Peru, and the Car Wash Phenomenon: Anti-Corruption and Democratic Governance 178
36.2 Peru and the Repeated Presidential Crisis: Constitutional Impotence and Democratic Erosion 179
36.3 Argentina's Democratic Transition and the Lessons of Accountability 180
CHAPTER THIRTY-SEVEN: THE ROLE OF INTERNATIONAL INSTITUTIONS: IMF, WORLD BANK, AND THE GOVERNANCE OF TRANSITIONS 181
37.1 The Evolution of International Institutional Engagement with Governance 181
37.2 International Conditionality and Domestic Sovereignty: The Theoretical Debate 182
37.3 The IMF and Bangladesh: From Balance of Payments Support to Governance Engagement 183
37.4 The World Bank's Governance Diagnostics and Bangladesh 184
CHAPTER THIRTY-EIGHT: INTERNATIONAL ELECTION OBSERVATION AND THE STANDARDS FOR DEMOCRATIC TRANSITIONS 185
38.1 The Architecture of International Election Observation 185
38.2 The December 2008 Elections: Assessment and Its Significance 186
38.3 The EU's Electoral Framework and Bangladesh: A Long-Term Partnership 187
CHAPTER THIRTY-NINE: THE DOCTRINE OF BASIC STRUCTURE IN COMPARATIVE PERSPECTIVE: INDIA, BANGLADESH, AND BEYOND 187
39.1 The Basic Structure Doctrine: Origins and Development 187
39.2 The Bangladesh Basic Structure Doctrine: From Anwar Hossain to the March 2026 Judgment 189
39.3 Basic Structure Doctrines in Africa and Latin America: Expanding the Comparative Frame 190
CHAPTER FORTY: THE SOCIOLOGY OF CONSTITUTIONAL CRISES: POLITICAL CULTURE, INSTITUTIONAL TRUST, AND THE CONDITIONS FOR DEMOCRATIC GOVERNANCE 191

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40.1 Political Culture and Democratic Governance: The Bangladesh Case 191
40.2 Institutional Trust and Its Erosion: The Dynamics of Constitutional Crisis 192
40.3 Civil Society, Media, and the Accountability Ecosystem 192
CHAPTER FORTY-ONE: THE FAKHRUDDIN PERIOD IN COMPARATIVE PERSPECTIVE: A SYNTHESIS 193
41.1 What Makes Bangladesh's Case Distinctive 193
41.2 The Technocratic Interlude in Comparative Perspective 194
41.3 The Democratic Consolidation Agenda: What Remains Undone 195
41.4 The International Dimension: Sovereignty, Engagement, and Democratic Support 195
CHAPTER FORTY-TWO: CONCLUSIONS OF PART FOUR: THE BANGLADESH MODEL AND ITS SIGNIFICANCE FOR COMPARATIVE CONSTITUTIONAL THEORY 196
42.1 What Bangladesh Contributes to Comparative Constitutional Theory 196
42.2 The Relevance of the Fakhruddin Period for Bangladesh's Constitutional Future 197
SELECTED BIBLIOGRAPHY FOR PART FOUR 198
PART FIVE: DEMOCRATIC CONSOLIDATION, CONTEMPORARY RELEVANCE, AND THE FUTURE OF BANGLADESHI CONSTITUTIONALISM 201
Volume Five: The Legacy, the Reckoning, and the Road Forward 201
FOREWORD TO PART FIVE 201
CHAPTER FORTY-THREE: THE POST-ELECTION CONSTITUTIONAL MOMENT: BANGLADESH IN FEBRUARY AND MARCH 2026 202
43.1 The February 12, 2026 Elections and Referendum: An Unprecedented Constitutional Event 202
43.2 The BNP Government and the Constitutional Reform Council: An Immediate Crisis 203
43.3 The Constitutional Challenge: Litigation and Judicial Review 204
43.4 The International Response: Recognition, Assessment, and Caution 205
CHAPTER FORTY-FOUR: THE FAKHRUDDIN LEGACY REASSESSED: RETROSPECTIVE ADJUDICATION AND HISTORICAL MEMORY 206
44.1 The November 2025 and March 2026 Judgments: Constitutional Retrospection 206
44.2 The Paradox of Retrospective Constitutionalism 207
44.3 Historical Memory and Constitutional Legitimacy: How Bangladesh Remembers Fakhruddin 208
44.4 The Scholarly Reassessment: Development Economics, Institutional Theory, and Statecraft 209
CHAPTER FORTY-FIVE: DEMOCRATIC CONSOLIDATION THEORY AND THE BANGLADESH CASE: ASSESSING THE PROSPECTS 210
45.1 What Democratic Consolidation Requires: The Theoretical Framework 210
45.2 The Democratic Backsliding Literature and Its Lessons for Bangladesh 211

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45.3 Transitional Justice and the Accountability Challenge 212
45.4 Sequencing and Prioritization: The Democratic Reform Agenda 213
CHAPTER FORTY-SIX: THE JURISPRUDENCE OF LEGITIMACY: CONSTITUTIONAL PHILOSOPHY IN A POST-CRISIS STATE 214
46.1 Legitimacy as a Constitutional Category 214
46.2 The Natural Law Tradition and Constitutional Legitimacy 215
46.3 Deliberative Democratic Theory and Bangladesh's Constitutional Reform Process 216
46.4 Rawlsian Justice and Constitutional Fundamentals 216
CHAPTER FORTY-SEVEN: THE POLITICAL ECONOMY OF DEMOCRATIC REFORM: BETWEEN DEVELOPMENT AND DEMOCRACY 217
47.1 The Development-Democracy Relationship Revisited 217
47.2 Fakhruddin Ahmed's Development Economics and the Governance-Growth Nexus 218
47.3 The Garment Sector and Democratic Development: A Complex Relationship 219
47.4 Microfinance, Social Capital, and Democratic Development 220
CHAPTER FORTY-EIGHT: GENDER, REPRESENTATION, AND THE UNFINISHED CONSTITUTIONAL AGENDA 220
48.1 Women in Bangladesh's Political History: The Paradox of Leadership and Exclusion 220
48.2 The July Charter's Gender Proposals and Their Limitations 221
48.3 The Fakhruddin Government's Gender Record 222
CHAPTER FORTY-NINE: THE CIVIL-MILITARY RELATIONSHIP AND CONSTITUTIONAL GOVERNANCE 223
49.1 The Military in Bangladesh's Constitutional History 223
49.2 The "1/11" Transition and the Military's Constitutional Role 223
49.3 The Military After 2024: Institutional Position and Constitutional Implications 224
CHAPTER FIFTY: JUDICIAL INDEPENDENCE AND THE CONSTITUTIONAL COURT IN A DEVELOPING DEMOCRACY 225
50.1 The Theory of Judicial Independence: Functions and Requirements 225
50.2 The Bangladesh Judiciary: A History of Contested Independence 226
50.3 The July Charter's Judicial Reform Proposals 226
50.4 Constitutional Review and the Kelsen Model 227
CHAPTER FIFTY-ONE: THE ANTI-CORRUPTION STATE: THEORY, PRACTICE, AND REFORM IN POST-CRISIS BANGLADESH 228
51.1 Corruption as a Constitutional Problem: The Theoretical Revisited 228
51.2 The Anti-Corruption Commission: Institutional Performance and Reform 229

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51.3 Comparative Lessons: Anti-Corruption Institutions in International Perspective 229
51.4 The Yunus Interim Government's Anti-Corruption Record 230
CHAPTER FIFTY-TWO: THE TECHNOCRATIC INTERLUDE AS A CONSTITUTIONAL CATEGORY: A THEORETICAL SYNTHESIS 231
52.1 Defining the Technocratic Interlude: Historical and Comparative Context 231
52.2 The Theory of Technocratic Governance: Epistemic and Democratic Dimensions 231
52.3 The Fakhruddin Model: Strengths and Limitations Reassessed 232
52.4 The Technocratic Interlude in the Age of Democratic Backsliding 233
CHAPTER FIFTY-THREE: THE PHILOSOPHY OF CONSTITUTIONAL MOMENTS AND THE FAKHRUDDIN LEGACY 234
53.1 Ackerman's Theory of Constitutional Moments and Its Application 234
53.2 Schmitt's State of Exception and Its Limits as Analytical Framework 235
53.3 Derrida on Law's Foundation: Force, Justice, and Constitutional Authority 236
CHAPTER FIFTY-FOUR: INTERNATIONAL DIMENSIONS: SOVEREIGNTY, ENGAGEMENT, AND THE FUTURE OF DEMOCRATIC SUPPORT 237
54.1 Bangladesh and the International Community: A Shifting Relationship 237
54.2 The Evolution of International Democracy Support 237
54.3 Regional Dynamics: India, China, and the Geopolitics of Bangladesh's Constitutional Development 238
54.4 The Rohingya Crisis and Its Constitutional Implications 239
CHAPTER FIFTY-FIVE: THE FUTURE OF BANGLADESHI CONSTITUTIONALISM: PROSPECTS, CHALLENGES, AND THEORETICAL REFLECTIONS 240
55.1 Constitutional Consolidation or Renewed Crisis? 240
55.2 Constitutional Design and Its Limits: The Enduring Challenge 240
55.3 The Young Generation and Bangladesh's Democratic Future 241
55.4 Technology, Democracy, and Constitutional Governance 242
CHAPTER FIFTY-SIX: FINAL SYNTHESIS: FAKHRUDDIN AHMED IN THE CONSTITUTIONAL IMAGINATION OF BANGLADESH 242
56.1 The Man, the Moment, and the Historical Judgment 243
56.2 The Institutional Legacy: What Endures 244
56.3 The Theoretical Contribution: From Biography to Concept 244
CHAPTER FIFTY-SEVEN: CONCLUSION: THE UNFINISHED CONSTITUTION AND THE FUTURE OF DEMOCRATIC BANGLADESH 245

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57.1 Constitutional Incompleteness as a Permanent Condition 245
57.2 The Lessons for Bangladesh: Ten Propositions 246
57.3 Fakhruddin Ahmed: A Final Portrait 248
57.4 Bangladesh Looks Forward: The Constitutional Promise of 2026 and Beyond 249
SELECTED BIBLIOGRAPHY FOR PART FIVE 250

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A Five-Part Comprehensive Academic Textbook

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Cover image description: Constitutional symbolism of Bangladesh — the national flag, the Supreme Court building, and imagery representing democratic transition and institutional reform.

Cataloguing Note: This work is a five-volume comprehensive academic study examining the life, career, and constitutional legacy of Fakhruddin Ahmed as Chief Adviser of Bangladesh's Non-Party Caretaker Government (2007–2009), situated within the broader context of Bangladesh's constitutional development, democratic transitions, and comparative constitutional law.

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PART ONE: ORIGINS, INTELLECT, CRISIS, AND CONSTITUTIONAL PHILOSOPHY

Volume One: The Man, the Nation, and the Constitutional Moment

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FOREWORD TO PART ONE

The story of Fakhruddin Ahmed is not simply the story of one man. It is the story of a nation oscillating between democratic aspiration and institutional collapse, between the inherited promises of a liberation struggle and the persistent failure of governance structures to live up to those promises. It is, at its deepest level, a story about the eternal tension in political philosophy between legitimacy and legality, between necessity and principle, between the rule of law and the law of survival.

This textbook approaches its subject with that understanding at its core. Fakhruddin Ahmed arrived at the summit of Bangladeshi governance under the most unusual of circumstances, at the most turbulent of moments, equipped with the most distinctive of intellectual and professional formations. He was not a politician. He was not a soldier. He was not even, in the conventional sense, a public figure. He was an economist of considerable international reputation, a technocrat of the first order, a man whose career had been built in the quiet corridors of central banking, development finance, and the World Bank's labyrinthine bureaucracy. And yet, on 12 January 2007, he took the oath of office as the Chief Adviser of Bangladesh's non-party caretaker government, the de facto head of state and government of a nation of more than 140 million people, in conditions of deep political crisis and declared national emergency.

To understand why he was chosen, what he did with the power entrusted to him, what constitutional and philosophical questions his tenure raised, and why his legacy continues to reverberate through Bangladeshi constitutional jurisprudence as recently as March 2026, we must understand Bangladesh itself, its constitutional architecture, its political culture, and the theoretical frameworks within which interim governance, emergency rule, and transitional constitutionalism operate. We must understand the competing jurisprudential philosophies that authorize or condemn extra-ordinary governmental arrangements. We must engage with the philosophical traditions that have grappled, across centuries and civilizations, with the problem of legitimate authority in times of crisis.

Part One of this textbook undertakes that ambitious task. It is organized across twelve chapters, each of which addresses a distinct dimension of the Fakhruddin Ahmed story and its broader intellectual, legal, and political context. The chapters are meant to be read in sequence, because each builds upon what precedes it, but each is also designed to be coherent as a standalone exploration of its particular theme.

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The reader should approach this text not merely as a biography but as an extended exercise in political and constitutional thinking, using the life of one remarkable individual as a lens through which to examine some of the most fundamental questions of governance, legitimacy, and democratic theory that confront the contemporary world.

CHAPTER ONE: THE WORLD THAT MADE THE MAN: BENGAL, PARTITION, AND THE INTELLECTUAL FORMATION OF FAKHRUDDIN AHMED

1.1 A Child of Two Worlds: Birth in a Transitional Bengal

On 1 May 1940, in the village of Nagarkandi in the district of Munshiganj, a child was born who would eventually carry the burdens of a nation upon his shoulders. The child was named Fakhruddin, a name of Arabic origin meaning "pride of the faith," and he was born into a family of professional respectability in a Bengal that was, at that moment, poised on the edge of one of the most catastrophic and transformative upheavals in the history of the subcontinent.

The Bengal of 1940 was still part of British India, a province of extraordinary cultural richness, intellectual ferment, and political complexity. The district of Munshiganj, historically known as Bikrampur, was one of the most storied regions of Bengal, a place that had produced scholars, lawyers, reformers, and political leaders across generations. The broader district had, through the medieval period and into the colonial era, been a center of Sanskrit learning, of Buddhist intellectual culture, of syncretic devotional traditions, and of a particularly distinctive form of Bengali Muslim identity that was simultaneously rooted in local vernacular culture and connected to broader Islamic civilization.

Fakhruddin's father, Mohiuddin Ahmed, was a physician, a man of science and service whose professional life embodied the aspirations of the Bengali Muslim middle class in the twilight of colonial rule. The physician-father is a significant biographical detail not merely for what it tells us about the family's social position but for what it suggests about the intellectual environment in which young Fakhruddin grew up. A household headed by a doctor in 1940s rural Bengal was a household oriented toward rationalism, toward the value of education, toward a particular kind of engagement with the modern world. It was a household in which the value of systematic knowledge, of professional expertise, of the patient application of trained intelligence to real-world problems, was practically demonstrated every day.

This early environment shaped Fakhruddin Ahmed's fundamental intellectual orientation in ways that would define his entire career. He would always be, at bottom, a technocrat, a man who believed in the power of organized knowledge, disciplined analysis, and institutional competence to solve real problems. This orientation would sustain him through a career of extraordinary scope and diversity, and it would define both the strengths and the limitations of his leadership during the caretaker government period.

1.2 Bengal's Partition and Its Consequences: The World Transformed

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The year 1947 was, for every Bengali, a year of simultaneous liberation and catastrophe. The British departure from the subcontinent brought political independence but also brought Partition, the division of Bengal between India and the newly created Pakistan that displaced millions of people, disrupted ancient social and economic networks, and imposed new identities and new allegiances that cut across the deep cultural bonds of the Bengali world.

For the Muslims of eastern Bengal, Partition brought a particular complexity. They were now citizens of a new nation, Pakistan, and residents of its eastern wing, East Bengal, which would later become East Pakistan. The Muslim League's long campaign for Pakistan had resonated strongly in Bengal, where Muslims had historically faced economic and social marginalization relative to the Hindu elite, and where the vision of a Muslim homeland offered the prospect of liberation from that subordination. But Pakistan as it actually existed proved deeply disappointing to the people of East Bengal. From the very beginning, the political and economic power of the new state was concentrated in West Pakistan, particularly in the Punjab, and the cultural, linguistic, and political distinctiveness of the Bengalis was treated as a problem to be managed rather than a heritage to be celebrated.

The language controversy of 1948 to 1952 was the first and perhaps most formative episode in this history of disappointment. The decision of the new Pakistani government to impose Urdu as the sole official language of Pakistan was experienced by Bengalis as an assault on their identity, on their cultural pride, on their deepest sense of self. The movement to defend the Bengali language, which culminated in the martyrdom of student protesters on 21 February 1952, became the foundation stone of a distinctly Bengali national consciousness that would eventually fuel the liberation struggle of 1971.

Fakhruddin Ahmed grew up within this unfolding political drama. He was twelve years old when the language martyrs fell in Dhaka in 1952. He was maturing into a young adult as the Awami League, under the leadership of Sheikh Mujibur Rahman, organized the Bengali people around the demand for linguistic rights, provincial autonomy, and eventually independence. The political education that any sensitive young Bengali would have absorbed through these years was an education in the relationship between language, identity, power, and the state. It was an education that could not help but sensitize him to questions about the legitimacy of governmental authority, about the conditions under which a government's claim to rule could be considered valid, about the relationship between cultural identity and political life.

This sensitivity would not express itself, in Fakhruddin's case, through political activism. He was not temperamentally suited to the rough and tumble of partisan politics. His sensibility was more analytical than combative, more inclined toward the systematic understanding of problems than toward the emotional mobilization of mass sentiment. But the political world in which he came of age had left its mark on him. He understood, at a visceral level, what it meant when governments failed their people, when institutions were corrupted by power, when the gap between official legitimacy and lived reality became insupportably wide.

1.3 Academic Excellence as Political Statement: Dhaka University and the Bengali Intelligentsia

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Fakhruddin Ahmed's academic career was a story of sustained excellence that placed him at the very pinnacle of his generation. He passed his Matriculation examination from Mathbaria High School in Pirojpur in 1955, and his Intermediate examination from Dhaka College in 1957. These accomplishments were already significant, demonstrating a capacity for rigorous academic work that set him apart from his contemporaries. But it was his performance at Dhaka University that truly announced the arrival of an exceptional mind.

At Dhaka University, he studied economics, a choice that reflected both his analytical orientation and a shrewd assessment of where knowledge and power intersected in the developing world. Economics in the 1950s and 1960s was not merely an academic discipline. It was the language in which the great debates about development, modernization, and the proper organization of post-colonial societies were conducted. To master economics was to equip oneself with the conceptual tools necessary to understand and potentially influence the forces that shaped the material conditions of life for millions of people.

He obtained his BA with Honours in Economics in 1960, and his MA in Economics in 1961, standing first in his class on both occasions. To stand first in his class, not once but twice, at Dhaka University, which was at that time one of the most intellectually demanding institutions in the entire region, was an achievement that placed him in a very small group of exceptional scholars. It was an achievement that opened doors and created possibilities that would not have been available to him otherwise.

The intellectual environment of Dhaka University in the late 1950s was one of intense political engagement. The campus was a center of political activism, of debates about the future of Pakistan and the specific aspirations of the Bengali people, of intellectual movements that connected local political struggles to broader currents of thought about nationalism, development, and social justice. Fakhruddin Ahmed navigated this environment as a scholar of economics who was deeply aware of its political dimensions but who channeled his engagement through the discipline of systematic analysis rather than through direct political participation.

The economics he learned at Dhaka University was strongly influenced by the development economics tradition that had emerged in the post-war period. This tradition, associated with scholars like Ragnar Nurkse, Gunnar Myrdal, W. Arthur Lewis, and later Hollis Chenery and Albert Hirschman, grappled with the fundamental question of how poor countries could achieve sustained economic growth and improve the living standards of their populations. It was an economics deeply concerned with practical policy questions, with the role of the state in directing economic development, with the problem of capital accumulation in resource-poor environments, and with the structural obstacles that prevented developing countries from realizing their economic potential.

This theoretical framework would remain central to Fakhruddin Ahmed's intellectual life throughout his career. Whether working as a civil servant in the Ministry of Finance, as a World Bank official designing development programs in Africa and Asia, or as Governor of Bangladesh Bank, he consistently approached problems through the lens of development economics, asking always how institutional arrangements and policy choices affected the material well-being of poor people.

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1.4 The Philosophical Foundations: Economics as Moral Science

To understand Fakhruddin Ahmed's intellectual formation, it is essential to understand that economics, particularly development economics as practiced in the mid-twentieth century, was not a value-neutral technical discipline but a fundamentally moral undertaking. The great development economists were explicitly motivated by a concern for human welfare, by the conviction that poverty was not a natural or inevitable condition but a problem that could be analyzed, understood, and ultimately overcome through the application of intelligent policy.

This moral dimension of development economics had deep roots in the broader tradition of social thought. Adam Smith, the founder of modern economics, was first and foremost a moral philosopher, and his Wealth of Nations cannot be properly understood apart from his earlier Theory of Moral Sentiments. The tradition of political economy that flowed from Smith through Ricardo, Mill, and Marshall always retained this awareness that economic questions were also questions about the proper organization of human society, about the conditions for human flourishing, about justice in the distribution of the fruits of collective endeavor.

The development economics that Fakhruddin Ahmed absorbed at Dhaka University and later deepened through his studies at Williams College and Princeton was shaped by this tradition but also by the specific challenges of the post-colonial world. The newly independent nations of Asia and Africa faced problems that the classical economic tradition had not fully anticipated: the legacies of colonial economic organization, which had typically oriented production toward export markets rather than domestic needs; the weakness of existing institutional frameworks; the shortage of trained technical personnel; the urgency of mass poverty alongside the demands of political legitimacy that required visible and rapid improvement in living standards.

The development economists of the 1950s and 1960s debated furiously about how to address these challenges. Should the state take the commanding heights of the economy, directing investment and guiding industrialization, as the structuralists argued? Or should reliance be placed on market mechanisms, with the state playing a more facilitative role, as the neoclassicals maintained? Should development be understood primarily as a problem of capital formation, or was it fundamentally about human capital, about health and education and the development of capabilities? These debates were not merely academic; they had immediate and enormous consequences for the design of development policy in countries whose millions of desperately poor people had little margin for error.

Fakhruddin Ahmed engaged seriously with all of these debates. His training at Williams College, where he obtained a second Masters degree in Development Economics in 1971, placed him in direct contact with some of the leading thinkers in the field. His doctoral work at Princeton, completed in 1975, gave him the rigorous methodological tools to analyze development problems with precision and depth. Princeton's economics department in the 1970s was one of the most distinguished in the world, and the intellectual environment there would have challenged and stretched even the most capable student.

The intellectual formation that resulted from this sustained engagement with development economics was, in important ways, the intellectual foundation for everything Fakhruddin Ahmed

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would do as a policymaker and eventually as Chief Adviser. He understood that economic development was not merely a technical problem of resource allocation but a deeply social and institutional challenge. He understood that the quality of institutions, the integrity of governance, the effectiveness of public administration were not peripheral to economic development but central to it. And he understood, perhaps most importantly, that the capacity of a state to manage its economy effectively was inseparable from the broader question of whether that state possessed genuine legitimacy in the eyes of its citizens.

1.5 The Civil Service Years: Understanding the State from Within

After completing his MA at Dhaka University in 1961, Fakhruddin Ahmed's first professional role was as a Lecturer in Economics at Dhaka University, beginning that same year. This brief period of academic employment reinforced his analytical orientation and his engagement with the economics literature. But it was followed, in 1963, by a more consequential step: his entry into the Civil Service of Pakistan.

This decision to enter the civil service rather than to pursue a purely academic career was characteristic of the development economics tradition of his time. The great development economists were not content to analyze problems from a comfortable distance; they wanted to be where decisions were made, where policy was translated into practice, where the gap between theory and reality was most visibly and painfully apparent. The civil service was, for an economically gifted young man in Pakistan in the early 1960s, the primary vehicle through which educated talent could be applied to the practical challenges of governance.

The Civil Service of Pakistan (CSP), into which Fakhruddin entered in 1963, was the successor to the Indian Civil Service (ICS) that the British had created as the administrative backbone of the Raj. Like the ICS, the CSP was an elite institution that selected its members through highly competitive examinations and then provided them with training in the art of administration. The CSP cadre occupied the senior positions in the federal and provincial bureaucracies, controlling access to governmental power and managing the implementation of public policy.

For a young Bengali joining the CSP in 1963, the experience was complicated by the political dynamics of Pakistan. The civil service, like the military and other institutions of the Pakistani state, was dominated by West Pakistanis, particularly Punjabis. Bengalis, who constituted the majority of Pakistan's population, were systematically underrepresented in the senior ranks of the civil service, a disparity that fed directly into the growing sense of Bengali grievance against the West Pakistani establishment.

Fakhruddin Ahmed's years in the Civil Service of Pakistan and later in the Government of Bangladesh gave him something invaluable: an intimate understanding of how the state actually functioned, of the bureaucratic processes and organizational dynamics that shaped what governments could and could not accomplish. This understanding was not merely theoretical. It was practical, embodied knowledge acquired through direct experience of the daily reality of public administration.

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He served in the civil service for more than fifteen years, eventually reaching the position of Joint Secretary in the External Resources Division of the Ministry of Finance. The External Resources Division was responsible for managing Bangladesh's relationships with international donors and creditors, for negotiating foreign aid agreements, and for coordinating the flow of external development finance into the country. This was a particularly important and complex responsibility in a country like Bangladesh, which was heavily dependent on foreign aid and which needed to navigate intricate relationships with the World Bank, the Asian Development Bank, bilateral donors from Europe, North America, and Japan, and the various United Nations agencies that operated programs in the country.

This experience in managing Bangladesh's external financial relationships gave Fakhruddin Ahmed an unusually comprehensive understanding of the international development finance system, its conventions, its priorities, and its politics. It also gave him a network of international contacts that would later prove invaluable both in his World Bank career and in his role as Central Bank Governor.

1.6 The World Bank Years: Development Theory in Global Practice

In November 1978, Fakhruddin Ahmed joined the World Bank, beginning a second career that would span more than twenty years and take him from Washington to Nairobi to Manila to New Delhi. His decision to join the World Bank was a natural next step for someone with his background in development economics and his experience in managing international financial relationships from the receiving end. The World Bank offered the opportunity to work on development problems at a global scale, to engage with the full range of development challenges across multiple countries and regions, and to influence the intellectual frameworks and policy approaches that shaped development practice worldwide.

The World Bank that Fakhruddin Ahmed joined in 1978 was in the midst of a significant intellectual and operational transformation. Under the presidency of Robert McNamara, who led the institution from 1968 to 1981, the Bank had dramatically expanded its activities and had reoriented its approach toward a direct focus on poverty reduction, particularly among the rural poor. McNamara's famous Nairobi speech of 1973, which explicitly placed the "absolute poor" at the center of the Bank's mission, had triggered a fundamental reassessment of development strategy that moved the institution away from its earlier focus on large infrastructure projects and toward a much broader engagement with agriculture, rural development, education, health, and basic services.

This intellectual climate was highly congenial to Fakhruddin Ahmed's own formation. The emphasis on poverty reduction, on the importance of institutional quality, on the need to understand the specific conditions and constraints of particular countries rather than applying uniform blueprints, resonated deeply with his understanding of development. He threw himself into the Bank's work with the same disciplined energy that had characterized his academic career, rising through a succession of increasingly senior positions.

His career at the World Bank included positions as Country Officer for South Asia, Principal Program Officer, Chief of Agriculture and Rural Development Operations in Eastern Africa,

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Principal Economist, Operations Adviser, Country Director, and Regional Manager. These roles took him across South Asia, East Asia, and Africa, exposing him to an extraordinary diversity of development challenges and governance environments. His five-year tenure in the Bank's resident mission in Kenya as Chief of Rural Development Operations for Eastern Africa was particularly formative, giving him direct experience of the governance challenges that afflicted many African states and deepening his understanding of the relationship between institutional quality and development outcomes.

Throughout his World Bank career, Fakhruddin Ahmed worked in an intellectual environment that was constantly debating the proper relationship between markets and states in the development process. The 1980s saw the ascendancy of the Washington Consensus, the set of policy prescriptions associated with the International Monetary Fund and the World Bank that emphasized trade liberalization, privatization, deregulation, and fiscal austerity. This represented a significant shift from the more statist development economics of the earlier period, and it generated intense controversy, particularly in developing countries that experienced the social costs of structural adjustment programs without always seeing the expected economic benefits.

Fakhruddin Ahmed navigated these intellectual currents with characteristic care and nuance. He was not an ideologue of either the statist or the market-fundamentalist variety. His experience had taught him that effective development required both competent state institutions and well-functioning markets, that neither governments nor markets on their own were sufficient to address the complex challenges of development. This balanced, evidence-based approach would characterize his leadership of Bangladesh Bank and his conduct as Chief Adviser.

The World Bank experience also gave Fakhruddin Ahmed something that would be crucial for his role as Chief Adviser: an extensive network of relationships with the international financial community and with the senior officials of major bilateral and multilateral donors. These relationships meant that, when he became Chief Adviser in January 2007, he could engage credibly with the international community in ways that few Bangladeshi politicians could match.

CHAPTER TWO: THE CONSTITUTIONAL ARCHITECTURE: BANGLADESH'S FUNDAMENTAL LAW AND ITS TENSIONS

2.1 The Constitution of Bangladesh: A Document Born in Struggle

To understand the constitutional situation that Fakhruddin Ahmed inherited and navigated, it is essential to understand the Constitution of Bangladesh, its origins, its structure, its underlying philosophical commitments, and the particular vulnerabilities that its institutional design created. The constitution is not merely a legal document. It is a political manifesto, a historical settlement, and a philosophical statement about the kind of state and society that the people of Bangladesh sought to create through their liberation struggle.

The Constitution of Bangladesh came into force on 16 December 1972, exactly one year after the Pakistani surrender that ended the Liberation War. It was adopted by a Constituent Assembly

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composed primarily of the elected representatives of the Awami League, which had won a sweeping victory in the 1970 elections and which represented the dominant political force of newly independent Bangladesh. The constitution was thus, from the outset, intimately connected with the Awami League's vision of the new state, and this connection would create ongoing tensions as the political landscape evolved and other political forces sought to put their own stamps on the fundamental law.

The original Constitution of Bangladesh was based on four fundamental state principles: nationalism, socialism, democracy, and secularism. These principles, which were inscribed in the preamble, reflected the specific ideological context of 1972. Nationalism referred specifically to Bengali nationalism, the cultural and ethnic identity that had driven the liberation struggle. Socialism, in the context of 1972, reflected both the genuine leftist orientation of significant elements within the Awami League and the broader prestige of socialist development models in the post-war developing world. Democracy meant parliamentary democracy of the Westminster variety, with a strong emphasis on the accountability of government to an elected legislature. And secularism meant the rejection of religion as a basis for state policy, a direct reaction against the use of Islamic ideology by the Pakistani establishment to justify its domination of East Bengal.

This original constitutional framework was, within just a few years of its adoption, radically transformed. The assassination of Sheikh Mujibur Rahman in August 1975 and the subsequent military takeover triggered a series of constitutional changes that fundamentally altered the character of the Bangladeshi state. The military governments of Ziaur Rahman (1975-1981) and Hussain Mohammed Ershad (1982-1990) made significant amendments to the constitution that replaced Bengali nationalism with Bangladeshi nationalism (a subtle but politically significant shift), eliminated secularism and inserted acknowledgments of Islam, and restructured governmental authority in ways that concentrated power in the executive.

The Bangladesh Nationalist Party (BNP), founded by Ziaur Rahman and subsequently led by his wife Khaleda Zia, represented the political tradition that had grown up around these constitutional modifications. The Awami League, led by Mujibur Rahman's daughter Sheikh Hasina after her return from exile in 1981, represented the tradition that sought to restore the original constitutional framework. These two traditions, each with its own vision of the Bangladeshi state, its proper relationship to religion, its appropriate institutional arrangements, and its understanding of national identity, became the two pillars of a deeply polarized political system that would dominate Bangladeshi politics for decades and create the conditions for the crisis that brought Fakhruddin Ahmed to power.

2.2 Parliamentary Democracy and Its Structural Tensions

The constitutional framework of Bangladesh, like many parliamentary systems derived from the Westminster model, creates a specific set of institutional dynamics that shape how political power operates. In the Westminster system, the executive derives its authority from the legislature, meaning that the government is formed by the party or coalition that commands a majority in the elected assembly. The Prime Minister is the leader of that majority, and the

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Cabinet is collectively responsible to the Parliament. This system is designed to ensure that executive power is accountable to elected representatives and, through them, to the people.

The strength of the Westminster system lies in its clarity of accountability. When a government loses the confidence of the legislature, it must either seek a new mandate from the people through elections or give way to an alternative government that does command parliamentary confidence. The system is designed to keep executive power connected to popular legitimacy through the mechanism of electoral accountability.

But the Westminster system also has structural tensions, particularly in societies where the party system is deeply polarized and where democratic norms and conventions are not firmly established. In Bangladesh, the specific structure of the party system created particularly acute tensions. The two major parties, the Awami League and the BNP, were not merely political organizations representing different policy positions; they were tribal identities, organized around the legacies of the two great founding figures of Bangladeshi politics (Mujibur Rahman and Ziaur Rahman), sustained by patronage networks, and characterized by an intense mutual hostility that made cooperative governance almost impossible.

This polarization was compounded by the structural incentives of the Bangladeshi political system. In a first-past-the-post electoral system, victory brings enormous rewards, while defeat brings almost nothing. The ruling party controls not only the formal levers of government but also extensive informal networks of patronage and power, including influence over the civil service, the judiciary, law enforcement, and the allocation of economic opportunities. The opposition, by contrast, is excluded from these benefits and has little effective means of influencing policy or protecting its supporters from the inevitable use of state power against political opponents.

This winner-take-all dynamic created intense incentives for both parties to do whatever was necessary to win elections, including manipulation of electoral processes, deployment of state resources for partisan advantage, and intimidation of opponents. It also created equally intense incentives for the losing party to contest the legitimacy of the results and to use extra-parliamentary means, including street protests, strikes, and hartals (general strikes), to destabilize the government.

2.3 The Genesis of the Caretaker Government System: A Constitutional Innovation

The particular solution that Bangladesh developed to address the problem of electoral manipulation by incumbent governments was the Non-Party Caretaker Government (NPCG) system, established by the 13th Amendment to the Constitution in 1996. This institutional innovation was a direct response to the experience of the February 1996 elections, which had been organized by the BNP government of Khaleda Zia and had been widely condemned as fraudulent.

The boycott of the 1996 elections by the Awami League and its allies, followed by massive street protests and eventually the resignation of the BNP government, created the political space for a constitutional amendment that would establish a neutral caretaker government to oversee future

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elections. The amendment, passed by the reconstituted Parliament in March 1996, inserted a new Chapter IIA into the Constitution establishing the Non-Party Caretaker Government system.

The system worked as follows. When a parliamentary term ended and new elections were to be held, the elected government would step down and be replaced by a non-party caretaker government. The caretaker government would be headed by the Chief Adviser, who would be appointed by the President and who was intended to be a politically neutral figure. The Constitution specified a priority list for the selection of the Chief Adviser: the most recently retired Chief Justice of Bangladesh would be the first choice; if that person was unable or unwilling to serve, the next option would be the second-most recently retired Chief Justice, and so on through a list of eligible retired judges. If none of the retired judges was available or acceptable, the President himself could serve as Chief Adviser. The caretaker government was given a maximum of 90 days to organize elections and transfer power to the newly elected government.

This institutional design reflected a particular theory of constitutional democracy: that in conditions where partisan governments could not be trusted to organize genuinely free and fair elections, the solution was to remove the government from the picture during the election period and replace it with a neutral authority that had no stake in the electoral outcome. The caretaker government was explicitly prohibited from making major policy decisions; its mandate was strictly limited to maintaining routine administration and facilitating the electoral process.

The philosophical underpinnings of this system deserve careful examination. The NPCG system rests on a theory of electoral legitimacy that insists on a separation between the organization of elections and the competitive struggle for political power. In this theory, elections can only produce genuinely legitimate outcomes if they are organized by an authority that is not itself a competitor in the elections, an authority whose institutional incentives align with free and fair process rather than with the victory of any particular political outcome.

This is a plausible and indeed compelling argument in the specific context of Bangladesh, where the institutional capacity to organize genuinely neutral elections without a change of government had repeatedly proven inadequate. But the NPCG system also created its own vulnerabilities. By introducing an unelected authority at the apex of the state for the election period, it created the possibility that this authority might exceed its mandate, either by extending its tenure beyond the stipulated 90 days or by taking actions beyond the scope of routine administration. The events of 2007 to 2009 would provide a vivid and troubling demonstration of exactly this vulnerability.

2.4 Constitutional Theory and the Problem of Constituent Power

The philosophical debates surrounding the NPCG system connect directly to broader theoretical debates in constitutional law and political philosophy about the nature and sources of constitutional authority. These debates have taken on renewed urgency in the context of Bangladesh's constitutional history, and the Bangladesh Supreme Court's landmark judgments of 2024, 2025, and the full judgment of March 2026 have engaged with them directly and with considerable philosophical sophistication.

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The most fundamental of these theoretical questions concerns what political philosophers and constitutional theorists call "constituent power" as distinguished from "constituted power." Constituted power refers to the powers exercised by the institutions created by a constitution: the legislature, the executive, the judiciary. These institutions are creatures of the constitution; their authority derives from the constitution and is limited and defined by it. Constituent power, by contrast, refers to the power that created the constitution in the first place, the power to give a political community its fundamental law.

The classical liberal tradition, represented by thinkers like John Locke and later by the framers of the American and French constitutions, located constituent power in "the people," understood as the collective political community. This idea, that the people are the ultimate source of constitutional authority and that governments derive their just powers from the consent of the governed, was one of the revolutionary insights of the Enlightenment era and became foundational to the modern tradition of democratic constitutionalism.

But the concept of constituent power raises profound questions that theorists have wrestled with for centuries. When does constituent power express itself? Is it confined to the moment of constitutional founding, or can it be reactivated at subsequent moments of political crisis? Who speaks for "the people" when they exercise constituent power? And what is the relationship between constituent power and the regular amendment procedures established by the constitution?

The German constitutional theorist Ernst-Wolfgang Bockenforde, one of the most important constitutional philosophers of the twentieth century, developed an influential account of constituent power that distinguished between the original constituent power of the founding moment and what he called the "secondary constituent power" exercised through formal amendment procedures. For Bockenforde, the original constituent power cannot be fully captured or exhausted by the constitution; it remains latent within the political community and can be reactivated in moments of fundamental constitutional breakdown or transformation.

This theoretical framework is directly relevant to the Bangladeshi case, and the Bangladesh Supreme Court's 2025 Appellate Division judgment on the 13th Amendment explicitly endorsed it, citing "modern constitutional scholarship (e.g. Bockenforde, Rubinelli)" in support of its reasoning. The Court held that "the constituent power does not expire after the Constitution's adoption but remains dormant within the people" and that major constitutional changes reflecting broad popular consensus, including the original adoption of the caretaker system in response to the mass mobilization of 1995 to 1996, might represent exercises of constituent power that stand beyond the scope of ordinary constitutional limitations.

This is a philosophically profound but also potentially dangerous claim. If constituent power can be exercised outside of formal constitutional processes, in response to mass mobilizations or other extra-ordinary expressions of popular will, then the boundary between legitimate constitutional transformation and unconstitutional rupture becomes difficult to define with precision. The history of Bangladeshi constitutionalism, with its repeated military interventions and its pattern of extra-constitutional constitutional change, illustrates both the practical importance and the theoretical difficulty of this question.

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2.5 The Basic Structure Doctrine: Protecting Constitutional Fundamentals

Another crucial theoretical framework for understanding Bangladesh's constitutional history is the "basic structure" doctrine, which holds that certain fundamental features of a constitution are beyond the power of the ordinary amendment process to alter or abolish. This doctrine originated in Indian constitutional jurisprudence, particularly in the Supreme Court of India's landmark judgment in Kesavananda Bharati v. State of Kerala (1973), and it has been adopted and applied in a number of South Asian constitutional systems, including Bangladesh.

The basic structure doctrine rests on the philosophical claim that constitutions contain certain fundamental commitments, certain irreducible core principles, without which the constitution would cease to be what it is. These core principles might include the democratic character of the state, the fundamental rights of individuals, the separation of powers, the independence of the judiciary, and the rule of law. If any of these core principles can be eliminated through the ordinary amendment process, then the constitution no longer provides the stable framework for democratic governance that is its primary purpose; instead, it becomes merely a procedural mechanism through which a sufficiently powerful majority can entrench its own rule permanently.

The doctrine has been applied in Bangladesh in a series of important cases, including in relation to the caretaker government system. The Bangladesh Supreme Court's December 2024 judgment striking down the 15th Amendment's abolition of the caretaker system held that free and fair elections, and the institutional arrangements necessary to ensure them, are part of the basic structure of the Bangladesh Constitution. This reasoning implies that no parliamentary majority, however large, can legitimately abolish the institutional safeguards for electoral integrity, because doing so would strike at the heart of the democratic order that the constitution is designed to establish and protect.

This application of the basic structure doctrine to electoral safeguards is a significant jurisprudential development that has important implications for democratic theory. It represents a judicial claim that certain democratic essentials are not merely subject to the ordinary majoritarian political process but stand outside of and above it. The courts, on this view, have not merely the power but the duty to protect these democratic essentials against parliamentary encroachment, even by governments with overwhelming legislative majorities.

Critics of the basic structure doctrine argue that it represents an impermissible expansion of judicial power at the expense of democratic self-governance. If unelected judges can declare that certain constitutional arrangements are beyond the power of elected majorities to change, then judicial preference substitutes for democratic choice in the determination of the constitution's most fundamental features. Defenders of the doctrine respond that without such protection, the constitution is merely a rule for the moment, not a framework for democratic governance across time, and that a majority that can entrench its own rule permanently by abolishing democratic safeguards is precisely the kind of tyranny that constitutionalism is meant to prevent.

The Bangladeshi experience provides powerful empirical ammunition for the defenders of the doctrine. The abolition of the caretaker system through the 15th Amendment in 2011 was

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followed by three successive elections of dramatically declining credibility, the 2014 election boycotted by the BNP and marked by the uncontested election of the majority of Awami League candidates, the 2018 election characterized by widespread and well-documented electoral manipulation, and the 2024 election so thoroughly controlled by the ruling party as to be essentially devoid of genuine competition. The trajectory from the abolition of the electoral safeguard to the complete breakdown of electoral legitimacy was direct and rapid.

2.6 Emergency Powers Theory: State of Exception and Its Philosophical Implications

The declaration of a state of emergency in Bangladesh in January 2007, which preceded and facilitated Fakhruddin Ahmed's appointment as Chief Adviser, requires examination through the lens of emergency powers theory, which is one of the richest and most philosophically complex fields in constitutional and political thought.

Emergency powers theory grapples with a fundamental paradox at the heart of constitutional government: the paradox that a constitutional order might need to suspend its own normal operations in order to survive a threat that those normal operations are unable to contain. Constitutions are designed for normal times; they allocate power among institutions, establish rules and procedures, and protect individual rights in ways that are premised on a functioning, relatively stable political environment. But emergencies, by definition, create conditions that fall outside the normal range of political circumstances, conditions so severe or so rapid in their development that the ordinary constitutional machinery may be unable to respond effectively.

The classical treatment of this problem in Western political thought goes back at least to the Roman institution of the dictatorship, the temporary grant of plenary power to a single individual in times of military emergency. The Roman dictator was, in Machiavelli's famous analysis, a constitutionally authorized departure from constitutional normality: a short-term concentration of authority in a trustworthy individual for the purpose of dealing with a specific crisis, after which constitutional normality would be restored. Machiavelli's admiration for this institution was based on his assessment that it had served Rome well for centuries, providing a flexible mechanism for dealing with extraordinary challenges without permanently disrupting the constitutional order.

Carl Schmitt, the controversial German legal and political theorist of the early twentieth century, developed the most provocative modern theory of emergency powers. Schmitt's famous opening proposition in Political Theology (1922), "Sovereign is he who decides on the exception," is one of the most discussed and debated claims in twentieth-century political philosophy. Schmitt argued that the capacity to decide when normal rules no longer apply, to declare a "state of exception" and govern outside the ordinary legal framework, is the defining attribute of genuine sovereign power. For Schmitt, the state of exception reveals the truth about sovereignty that is masked during normal times: that legal order ultimately rests on a political decision, on an act of will, that precedes and conditions the legal framework rather than being governed by it.

Schmitt's theory is simultaneously illuminating and dangerous. It is illuminating because it draws attention to the genuine reality that constitutional systems must have mechanisms for dealing with situations that exceed their designed parameters, and that these mechanisms inevitably

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involve exercises of power that are not fully governed by the ordinary legal framework. It is dangerous because it can be used to justify the erosion of constitutional limits by powerful interests that claim the authority to declare a state of exception whenever it is convenient for them to do so.

The liberal constitutional tradition has sought to contain the dangers identified by Schmitt while acknowledging the practical necessity of emergency powers. John Locke recognized a "prerogative" power in the executive to act outside the law in extreme necessity, but he conditioned this prerogative on its exercise in the public interest and ultimately subject to the judgment of the people. John Stuart Mill argued that temporary departures from constitutional normality might be justified in conditions of extreme crisis but insisted that such departures must be genuinely temporary and must be aimed at restoring rather than replacing constitutional order.

More recently, constitutional theorists like Bruce Ackerman, Sanford Levinson, and Giorgio Agamben have debated the proper design of emergency power frameworks in ways that have direct relevance to the Bangladeshi case. Ackerman's argument for a constitutional framework of "emergency escalators," which automatically increase legislative oversight as emergency powers are extended, represents one attempt to domesticate emergency power within a constitutional framework. Agamben's more pessimistic analysis of the "state of exception" as a paradigm of modern governance argues that emergency powers tend to become permanent, normalizing the suspension of law that was supposedly temporary.

The Bangladeshi emergency of 2007 to 2008 illustrates both the necessity and the dangers of emergency powers with striking clarity. The political crisis of late 2006 and early 2007 was genuinely severe; there was serious risk of widespread violence, democratic breakdown, and potentially even civil conflict. The intervention of the military-backed caretaker government, whatever its constitutional ambiguities, prevented the worst-case outcome and eventually created conditions for a credible election. But the emergency also lasted far longer than the constitutional framework contemplated, far longer than the 90-day mandate of the caretaker government; it involved the arrest of political leaders including both major party heads on corruption charges that many observers viewed as politically motivated; and it was accompanied by systematic suppression of political activity that represented a significant departure from democratic norms. The emergency was, in short, both necessary and excessive, both constitutionally defensible in its general purpose and constitutionally problematic in many of its specific manifestations.

CHAPTER THREE: THE MAKING OF THE CRISIS: POLITICAL POLARIZATION AND INSTITUTIONAL FAILURE, 1991-2006

3.1 The Restoration of Democracy in 1991: Promise and Limitation

The year 1991 marked a watershed in Bangladeshi political history. The mass movement that overthrew the military government of Hussain Mohammed Ershad in December 1990, in which the Awami League and the BNP cooperated, appeared to herald a genuine democratic transition.

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For the first time since independence, Bangladesh would have a government chosen in elections that were organized by a neutral authority and that were widely accepted as free and fair.

The elections of February 1991 brought the BNP, led by Khaleda Zia, to power. They were followed by a period of parliamentary democracy that, despite its imperfections, represented a genuine departure from the pattern of military intervention and authoritarian rule that had characterized so much of Bangladesh's post-independence history. The restoration of democratic governance was accompanied by significant constitutional reforms, including the elimination of the presidential system that Ershad had installed and the restoration of parliamentary democracy in the Westminster tradition.

But the promise of 1991 was only partially fulfilled. While the formal institutions of parliamentary democracy were established and the military returned to the barracks, the underlying political culture remained deeply problematic. The two main parties, the Awami League and the BNP, were characterized by profound internal authoritarianism, with power highly concentrated in the hands of their respective leaders and with little space for internal debate, democratic accountability, or the development of the party culture that healthy democracy requires.

More troublingly, the two parties' mutual hostility translated into a zero-sum approach to democratic governance that prioritized winning over governing. The BNP government of 1991 to 1996 was characterized by increasing corruption, misuse of state resources for party advantage, and a growing tendency to use state power to intimidate opponents and suppress dissent. The Awami League, rather than functioning as a responsible opposition that held the government accountable through parliamentary means, resorted to the politics of the street, using hartals and other forms of extra-parliamentary pressure to destabilize the government.

3.2 The Election Crisis of 1994-1996 and the Birth of the Caretaker System

The confrontation between the two parties came to a head in the crisis of 1994 to 1996, which would ultimately produce the 13th Amendment and the Non-Party Caretaker Government system. The specific trigger was a by-election in Magura constituency in March 1994, in which the BNP candidate won under circumstances that the Awami League characterized as deeply fraudulent. The Awami League and its allies used this by-election as the occasion to withdraw from Parliament and launch a sustained campaign of hartals and street protests demanding electoral reform.

The Awami League's central demand was for the introduction of a neutral caretaker government to oversee future elections. The BNP government of Khaleda Zia initially resisted this demand, arguing that it was unconstitutional and unnecessary. But the sustained pressure of the opposition's street campaign, combined with growing public frustration with political instability, eventually forced the BNP's hand. In the immediate lead-up to new elections, the BNP conceded the principle of a caretaker government arrangement.

What followed was a complex negotiation about the specific form of the caretaker government, culminating in the passage of the 13th Amendment in March 1996. The amendment established

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the Non-Party Caretaker Government system with the features described in the previous chapter: the priority list for the Chief Adviser beginning with the most recently retired Chief Justice, the 90-day mandate, the prohibition on major policy decisions, and the charge to facilitate free and fair elections.

The adoption of the 13th Amendment was celebrated as a breakthrough for Bangladeshi democracy, a constitutional innovation that addressed one of the most fundamental structural weaknesses of the political system. And indeed, the elections held under the new system in June 1996, which brought the Awami League to power after 21 years in opposition, were widely regarded as the most credible elections in Bangladesh's history. The caretaker government of Justice Mohammad Habibur Rahman had organized the elections with notable competence and neutrality.

The success of the 1996 elections seemed to validate the caretaker system and to augur well for Bangladesh's democratic future. The elections of 2001, which brought the BNP back to power in a second election organized under the caretaker system, were also reasonably credible. The system appeared to be working.

3.3 The Seeds of Disaster: The BNP Government of 2001-2006

The BNP government that took office in October 2001 under Khaleda Zia was, from the beginning, characterized by a level of corruption and misuse of power that set new records even by Bangladesh's standards. International organizations and independent observers documented systematic looting of state resources, pervasive politicization of the civil service and judiciary, and a culture of impunity for BNP activists and supporters that emboldened criminal elements and created an environment of lawlessness.

Transparency International's Corruption Perceptions Index, which provides a comparative ranking of perceived corruption across countries, ranked Bangladesh as the most corrupt country in the world for four consecutive years from 2001 to 2004. This was not merely a statistical abstraction; it reflected a daily reality of bribery, extortion, and rent-seeking that permeated every aspect of public life. The police extorted money from ordinary citizens; government contracts went to politically connected firms at inflated prices; businessmen had to pay protection money to political godfathers; and public services that citizens had paid for in taxes were withheld unless additional payments were made.

The 2001 BNP government also presided over a significant deterioration in the security environment. The post-election period saw systematic attacks on Hindu minorities and on Awami League supporters, and the government was widely criticized for its inadequate response to these attacks. More alarmingly, the government's alliance with Islamist parties, including the Jamaat-e-Islami and the Islami Oikya Jote, created political space for the growth of radical Islamist movements, including groups like Jagrata Muslim Janata Bangladesh (JMJB) and Jamaat-ul-Mujahideen Bangladesh (JMB), which had connections to international jihadist networks and which were responsible for a series of violent attacks.

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The most shocking of these attacks was the coordinated bombing campaign of 17 August 2005, in which the JMB simultaneously detonated more than 400 small bombs across 63 of Bangladesh's 64 districts. Although the attacks killed only two people and wounded about a hundred, their scale and coordination demonstrated a level of organizational capacity that represented a genuinely alarming security threat. The government's response was slow and inadequate, and there were credible allegations of government connections to some of the Islamist networks involved.

3.4 The Electoral System and the Architecture of Manipulation

The institutional design of Bangladesh's electoral system created specific vulnerabilities to manipulation that the caretaker system was designed to address but that continued to cause problems even under caretaker governments. Understanding these vulnerabilities is essential to understanding why the crisis of 2006 to 2007 was so severe and why it proved so difficult to resolve.

The first and most fundamental vulnerability was the voter list. Bangladesh lacked a reliable, accurate, and up-to-date voter list. The lists that existed were riddled with errors, duplications, and omissions, and they were subject to systematic manipulation by political parties that added fictitious voters, removed opponents' supporters, and exploited the unreliable data to facilitate ballot stuffing and other forms of fraud. The problem of the voter list was not merely technical; it was a direct consequence of the absence of a national identification system and of the inadequacy of the institutional infrastructure for maintaining electoral data.

The second major vulnerability was the Election Commission itself. The Election Commission of Bangladesh was constitutionally mandated to be an independent institution responsible for organizing elections. But in practice, its independence was compromised by the manner of the appointment of Election Commissioners, who were selected by the government of the day and who therefore tended to be sympathetic to the government that appointed them. The Commission lacked the institutional capacity, the legal powers, and the political independence necessary to organize genuinely neutral elections in conditions where the incumbent government was determined to exploit its advantages.

The third vulnerability was the civil service and law enforcement apparatus. In Bangladesh, as in many developing countries, the civil administration plays a crucial role in organizing elections, from the compilation of voter lists to the management of polling stations to the counting of ballots. If the civil service is politicized, if the police are deployed to intimidate voters or opposition candidates, if local government officials use their positions to deliver votes for the ruling party, then the formal machinery of democratic elections becomes a vehicle for authoritarian entrenchment rather than genuine democratic choice.

The BNP government of 2001 to 2006 systematically exploited all of these vulnerabilities to position itself for the next elections. It filled the civil service and law enforcement with loyalists, manipulated the voter list in its favor, appointed a sympathetic Election Commission, and designed the institutional framework for the election period to maximize BNP advantage. The centerpiece of this strategy was the manipulation of the caretaker system itself.

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3.5 The Manipulation of the Caretaker System: The Chief Justice Controversy

The most brazen element of the BNP's strategy to manipulate the caretaker system was the attempt to ensure that the incoming Chief Adviser, who would by constitutional provision be the most recently retired Chief Justice, was a BNP sympathizer. To achieve this, the BNP government extended the age of retirement for Supreme Court judges, a measure that would have the effect of keeping a BNP-loyal judge on the bench long enough to become the most recent retiree at the moment the caretaker period began.

The specific individual involved was Justice K.M. Hasan, who was the Chief Justice of Bangladesh appointed under the BNP government. Justice Hasan was known to have been associated with the BNP before his judicial appointment, having reportedly held a leadership position in the party's youth wing. The Awami League argued that his appointment as Chief Justice had been motivated by the desire to ensure a BNP-friendly head for the eventual caretaker government.

This accusation, which the BNP denied, encapsulated a fundamental flaw in the design of the 13th Amendment's mechanism for selecting the Chief Adviser. The amendment assumed that retired Chief Justices would be politically neutral figures who could be trusted to organize elections without favoring any party. But if the selection of Chief Justices was itself subject to partisan considerations, then the neutrality of the resulting Chief Adviser could not be guaranteed.

When Justice Hasan became eligible to serve as Chief Adviser at the end of the BNP's parliamentary term in October 2006, the Awami League declared that it would not accept his appointment and demanded that alternative arrangements be made. The Awami League organized massive street protests to press this demand, and the resulting confrontation created a political crisis of the first order.

Justice Hasan, to his credit, recognized that his appointment as Chief Adviser would be so contested as to be counter-productive, and he declined to serve. Under the constitutional provision that specified the priority order for selecting the Chief Adviser, the presidency of Iajuddin Ahmed then became the fallback option, and Iajuddin himself assumed the role of Chief Adviser in addition to his existing role as President.

This arrangement was deeply problematic. Iajuddin Ahmed was a President who had been appointed by the BNP government, and his assumption of the role of Chief Adviser meant that a government sympathetic to the BNP would be overseeing elections in which the BNP was a participant. The Awami League refused to accept this situation and maintained its boycott of the electoral process, while the BNP pressed ahead with preparations for elections under Iajuddin's government.

3.6 The Slide into Anarchy: Late 2006

The political situation in Bangladesh in the final months of 2006 deteriorated into what can only be described as a state of controlled anarchy. The country experienced almost daily hartals

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organized by the Awami League and its allies, general strikes that brought economic activity to a standstill and subjected ordinary citizens to considerable hardship. Political violence was pervasive, with clashes between supporters of the two main parties resulting in dozens of deaths and hundreds of injuries. Transport was disrupted, businesses could not operate normally, schools and universities were closed for extended periods, and the atmosphere of political tension created a generalized climate of uncertainty and fear.

International observers watched the deteriorating situation with growing alarm. The United Nations and other international organizations had already announced that they could not endorse the planned January 2007 elections if they were held under the existing political conditions, where one of the two major parties was boycotting the process. The withdrawal of international legitimacy from the electoral process would have severely damaged Bangladesh's standing in the international community and would have undermined the credibility of any government that emerged from the elections.

The Awami League's final, decisive step came on 3 January 2007, just nineteen days before the scheduled election date. After days of internal deliberation, the Awami League formally announced that it would boycott the elections. This announcement made the holding of credible elections effectively impossible; a parliamentary election in which one of the two major parties and its allies were not participating could not produce a government with genuine democratic legitimacy.

By the second week of January 2007, the country was effectively ungovernable. The Iajuddin caretaker government had lost the support of the Awami League and its allies, of the international community, and of significant sections of civil society. Political violence was escalating. The economy was suffering severe disruption. And there was genuine fear that the country was sliding toward a level of instability that could threaten social order itself.

It was in this context that the military intervention of 11 January 2007 occurred. And it was in the immediate aftermath of that intervention that Fakhruddin Ahmed was called upon to assume leadership of Bangladesh's most consequential caretaker government.

CHAPTER FOUR: THE MOMENT OF APPOINTMENT: JANUARY 2007 AND THE JURISPRUDENCE OF NECESSITY

4.1 The Military's Move: The Night of 11 January 2007

The events of 11 January 2007 are known in Bangladesh simply as "1/11," a shorthand that evokes comparison with the American "9/11" and conveys the sense of a transformative rupture with what came before. The events of that night were carefully orchestrated but played out under tremendous pressure and with considerable haste, as military leaders sought to manage a rapidly deteriorating political crisis before it reached the point of no return.

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According to accounts that have since become available through WikiLeaks revelations of US diplomatic cables, investigative journalism, and scholarly analysis, the Army Chief, General Moeen U Ahmed, had been in consultation with political stakeholders, civil society representatives, and diplomatic missions for some weeks before 11 January. The army's concerns were several. First, there was the fear that a one-sided election organized by the Iajuddin government would be rejected by the Awami League and its allies, leading to sustained and potentially violent confrontation after the election. Second, there was concern about Bangladesh's position in UN peacekeeping operations, which were an important source of revenue and prestige for the Bangladesh military; a military that was seen as supporting a fraudulent election might face exclusion from these operations. Third, and perhaps most fundamentally, there was a genuine concern about social order, about the risk that the escalating political confrontation would produce a level of violence that would overwhelm the state's capacity to maintain basic security.

In this context, General Moeen and his close associates decided that a dramatic intervention was necessary. The intervention took the form of orchestrated pressure on President Iajuddin Ahmed to declare a state of emergency and to resign as Chief Adviser. The declaration of emergency on the night of 11 January, followed by Iajuddin's resignation as Chief Adviser and the acceptance of his advisers' resignations, was thus not a spontaneous constitutional development but a carefully managed outcome of military pressure.

The constitutional mechanism through which the transition was engineered is worth examining in detail, because it illustrates the gap between the formal constitutional framework and the actual political dynamics that shaped events. Under the 13th Amendment, when the President was serving as Chief Adviser and was unable to continue, the constitutional framework specified that the next person in the priority order would assume the role. The provisions for this eventuality were not clearly articulated in the constitution, which had not been designed to contemplate a situation in which the President himself had become the Chief Adviser and was then forced to resign under military pressure.

The specific selection of Fakhruddin Ahmed as the replacement Chief Adviser represented a negotiated outcome among the military leadership, elements of civil society, and the political parties. Fakhruddin's profile, as a former central bank governor with extensive international experience but without party political affiliations, made him acceptable to both major political parties as a neutral figure. His close connections to the World Bank and the international development community were also seen as an asset, giving him the credibility to manage Bangladesh's relationships with donors and international financial institutions during what promised to be a period of significant political uncertainty.

The oath ceremony was conducted by the Cabinet Secretary, Ali Imam Majumder, on 12 January 2007. The ceremony lasted approximately ten minutes. Fakhruddin Ahmed was sworn in as Chief Adviser, along with thirteen advisers who would constitute the advisory council. The Awami League's president, Sheikh Hasina, was reportedly present at the ceremony, a symbolic gesture of at least partial endorsement from one of the two main political parties.

4.2 Constitutional Validity and the Problem of Legitimacy

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The constitutional validity of Fakhruddin Ahmed's appointment as Chief Adviser and of the caretaker government he led has been the subject of extensive legal debate. The government that he headed was, in important respects, constitutionally anomalous. It was backed by the military, which gave it the coercive power necessary to operate but which also meant that the civilian facade of the caretaker government masked a reality of military direction. It extended its tenure far beyond the 90-day constitutional mandate. It ruled under an emergency declaration that suspended fundamental rights. And it took actions, particularly in the anti-corruption sphere, that went well beyond the caretaker government's constitutional mandate to confine itself to routine administration.

These anomalies raise fundamental questions about the legitimacy of the Fakhruddin government. The concept of political legitimacy is one of the central concerns of political philosophy, and it admits of multiple theoretical frameworks. Weber's classic typology distinguishes between traditional legitimacy (authority based on custom and tradition), charismatic legitimacy (authority based on the exceptional qualities of a leader), and legal-rational legitimacy (authority based on formally established rules and procedures). Contemporary democratic theory has added the concept of democratic legitimacy, authority that derives from the consent of the governed expressed through genuinely free and fair electoral processes.

The Fakhruddin government clearly lacked democratic legitimacy in the formal sense: it was not chosen through an electoral process and had no electoral mandate. Its claim to legal-rational legitimacy was compromised by the circumstances of its appointment and by its extension beyond the constitutionally prescribed tenure. Its basis for legitimate authority had to rest on something else, something like what the constitutional law theorist Mark Tushnet has called "crisis legitimacy": the claim that an extraordinary situation justifies an extraordinary governmental arrangement that would be indefensible under normal conditions.

The concept of crisis legitimacy connects to the older philosophical tradition of necessity as a ground for political action. The maxim "necessitas non habet legem" (necessity knows no law) has been invoked across centuries to justify departures from ordinary legal rules in conditions of extreme urgency. Machiavelli's discussion of the Roman dictatorship, Locke's theory of prerogative, Lincoln's exercise of emergency powers during the American Civil War, and many other historical episodes reflect the practical reality that governance sometimes requires action that the existing legal framework does not authorize but that the situation appears to demand.

The problem with necessity as a ground for governmental action is that it is inherently indeterminate. Almost any governmental claim to extraordinary power can be packaged in the language of necessity. The history of authoritarianism is full of leaders who justified their seizure or extension of power by invoking the necessity of dealing with a genuine or manufactured emergency. The challenge for constitutional theory is to specify conditions under which necessity arguments are valid while preventing them from becoming a blank check for unlimited governmental power.

Several conditions might be identified as necessary (though not sufficient) for a valid necessity argument. The emergency must be genuine and severe, not manufactured or exaggerated. The

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extraordinary measures must be necessary in the sense that ordinary constitutional means are genuinely unable to address the emergency. The measures must be proportionate to the emergency, not going further than required to address it. The departure from ordinary constitutional arrangements must be temporary, aimed at restoring constitutional normality rather than replacing it. And there must be some form of accountability, some mechanism through which the authority exercising necessity powers is answerable for its actions.

The Fakhruddin government's claim to necessity-based legitimacy can be assessed against these criteria. On the first criterion, the genuineness of the emergency, the case is relatively strong: the political crisis of late 2006 and early 2007 was undeniably severe, with real risks of violence, economic disruption, and governmental breakdown. On the second criterion, the inadequacy of ordinary constitutional means, the case is mixed: the constitutional mechanism for selecting the Chief Adviser had indeed failed, as the controversy over Justice Hasan had demonstrated, but it is not entirely clear that all constitutional options had been exhausted before the military intervened. On the third criterion, proportionality, the case is weakest: the scope and duration of the emergency measures went well beyond what the initial crisis appeared to require, with 440,000 arrests, detention of political leaders for extended periods, and a state of emergency that lasted nearly two years. On the fourth criterion, temporariness, the government ultimately did fulfill this requirement by organizing elections and transferring power to an elected government, though the two-year timeline was far longer than the constitution contemplated. On the fifth criterion, accountability, the record is deeply unsatisfactory: the emergency declaration suspended the mechanisms of accountability that would normally have constrained the government's actions.

4.3 The Theory of Technocratic Governance: Expertise, Neutrality, and Democratic Legitimacy

Fakhruddin Ahmed's appointment embodied a specific theory of governmental legitimacy that deserves explicit examination: the theory of technocratic governance. This theory holds that there are conditions under which governance by technical experts is not only acceptable but preferable to governance by elected politicians. In its strongest form, the theory of technocracy challenges the fundamental democratic premise that elections are the proper mechanism for selecting those who govern; in its more modest form, it argues for a division of labor between democratic politics and technical expertise in which elected politicians set overall direction while technical experts implement policy.

The theory of technocracy has a long intellectual history, going back at least to Plato's ideal of rule by philosopher-kings in the Republic. Plato argued that the complex business of governing a state required specialized knowledge, the knowledge of justice and of the good, that could only be acquired through long philosophical training. Just as we do not select our physicians or our ship captains by popular vote, we should not, on this argument, select our governors through a process that gives equal weight to the opinions of the ignorant and the expert.

Contemporary defenders of technocracy make a less ambitious but still significant version of this argument. They point to the growing technical complexity of modern governance, to the fact that decisions about monetary policy, public health, environmental regulation, and many other policy

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domains require specialized knowledge that most elected politicians do not possess. They argue that institutions staffed by technical experts, like central banks and regulatory agencies, often produce better outcomes than institutions governed by electoral politics, because they are insulated from the short-term pressures and populist temptations that distort political decision-making.

The critics of technocracy, from multiple political traditions, challenge both the descriptive accuracy and the normative desirability of this picture. From a democratic perspective, technocratic governance is inherently problematic because it removes consequential decisions from democratic deliberation and accountability. Even if technical experts make better decisions by some objective measure, the democratic tradition insists that people have a right to govern themselves, to make their own choices and their own mistakes, rather than being governed for their own good by unelected experts. From a different angle, critics challenge the claim that technocratic decisions are genuinely neutral or purely technical. Every major policy decision involves value judgments about competing priorities and interests, and technocratic governance tends to obscure these value judgments behind the language of technical necessity, making it harder for democratic deliberation to engage with them.

In the case of the Fakhruddin Ahmed government, the claim to technocratic legitimacy was moderated by the explicit acknowledgment that the government was a transitional arrangement aimed at restoring democratic governance rather than a permanent alternative to it. Fakhruddin himself consistently framed his role as that of a caretaker, a temporary steward whose primary responsibility was to organize free and fair elections and return power to an elected government. This framing placed the government within a democratic framework even while it departed from democratic selection processes.

But the practice of the government was more ambitious than this modest self-presentation suggested. The anti-corruption campaigns, the institutional reforms, the separation of the judiciary from the executive, the creation of new regulatory bodies, the introduction of national identity cards, the reform of the Election Commission: these were not routine administrative activities but significant exercises of governmental power that would shape the political and institutional landscape of Bangladesh for years to come. Whether this broader agenda was justified by the circumstances, and whether it remained within the bounds of what a caretaker government could legitimately do, became subjects of sustained controversy.

4.4 International Dimensions: The Role of Foreign Powers in the 1/11 Transition

The 1/11 transition did not occur in an international vacuum. The international community, including the major bilateral donors to Bangladesh, the United Nations, and the international financial institutions, played significant roles in shaping the context within which the transition occurred and in legitimizing the Fakhruddin government thereafter.

The United States, the European Union, and other major donor countries had been watching the deteriorating political situation in Bangladesh with growing concern throughout late 2006. They had made clear that they would not endorse elections that were boycotted by a major political party and that were held in conditions of escalating violence. This position effectively withdrew

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international legitimacy from the elections that the Iajuddin government was preparing to hold, contributing to the sense that those elections could not proceed.

WikiLeaks revelations of US diplomatic cables have provided some insight into the role of American diplomacy in the 1/11 transition. The cables reveal that the US Ambassador, Patricia Butenis, met with Brigadier General A.T.M. Amin of the Directorate General of Forces Intelligence on the night of 11 January, and that the military leadership shared with her their concerns about the security situation and their intentions regarding the transition. The cables suggest that the US was informed of the military's plans rather than directing them, but the fact of this consultation indicates that the military leadership was seeking at minimum the tacit acquiescence of the most important bilateral relationship in Bangladesh's foreign policy.

The UK and the EU were similarly informed and similarly acquiescent. The international community's overall posture toward the 1/11 transition was one of cautious support, justified by the argument that the transition, whatever its constitutional anomalies, was preferable to the alternative of contested elections in conditions of political breakdown. International development organizations like the World Bank and the Asian Development Bank quickly signaled their willingness to continue working with the new government, providing an important element of international credibility.

The relationship between the international community and the Fakhruddin government was sustained throughout the caretaker period by a shared commitment to the ultimate goal of free and fair elections and by a pragmatic assessment that the government, despite its problematic origins, was making genuine progress toward that goal. International election observers who monitored the December 2008 elections pronounced them substantially free and fair, providing the crucial international endorsement that gave the transition its ultimate legitimacy.

The international dimension of the 1/11 transition raises important questions about the relationship between sovereignty and international intervention in cases of democratic breakdown. The liberal internationalist tradition holds that the international community has both the right and the responsibility to promote democratic governance, to refuse to recognize or support governments that come to power through fraudulent elections, and to provide support for transitions toward genuine democracy. Critics of this position, from a sovereignty-based perspective, argue that international pressure on domestic political processes constitutes interference in internal affairs that is incompatible with the equal sovereignty of states.

The Bangladeshi case illustrates the complexity of this debate. International pressure contributed to the failure of the planned January 2007 elections and to the conditions that facilitated the 1/11 intervention. Whether this international involvement was on balance positive or negative for Bangladeshi democracy is a question on which reasonable observers disagree. What is clear is that the international community's role was significant and that any adequate account of the Fakhruddin Ahmed period must take this international dimension seriously.

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CHAPTER FIVE: FAKHRUDDIN AHMED AS CHIEF ADVISER: THE PHILOSOPHY AND PRACTICE OF TRANSITION

5.1 The Mandate and Its Interpretation: What Could the Chief Adviser Do?

When Fakhruddin Ahmed took the oath of office on 12 January 2007, the constitutional framework was clear on certain points and deeply ambiguous on others. The 13th Amendment established the Non-Party Caretaker Government to perform the routine functions of government and to assist the Election Commission in holding elections. It was explicit that the caretaker government could not make any policy decisions beyond what was necessary for routine administration.

This constitutional framework, taken literally, would have severely limited what Fakhruddin Ahmed could do. Under a strict interpretation, his government should have confined itself to paying civil servants' salaries, maintaining basic public services, and working with the Election Commission to prepare for elections within the 90-day window. It should not have launched major anti-corruption campaigns, restructured constitutional bodies, reformed the voter list, or undertaken any of the many other initiatives that the government actually pursued.

The justification for the government's more expansive approach rested on several arguments. First, the government argued that the extraordinary circumstances of the political crisis created extraordinary governmental needs that ordinary caretaker mandates did not contemplate. The corruption and institutional decay of the preceding years had created a situation where genuinely free and fair elections could not be organized without significant preparatory work that went beyond routine administration. To organize credible elections in Bangladesh in 2007, it was necessary first to fix the voter list, which required creating a national identity card system; to reform the Election Commission and give it genuine independence; to address the corruption and politicization that had compromised the civil service and law enforcement; and to create at least a minimum of institutional credibility in the bodies responsible for organizing the electoral process.

Second, the government argued that the state of emergency under which it operated gave it powers beyond those of an ordinary caretaker government. The Emergency Powers Regulations, which were issued under the emergency declaration, suspended various constitutional rights including the right to move courts against executive action, and gave the government broad powers to act in the interest of "public safety" and "maintenance of order." These powers, the government argued, justified actions that would have been beyond the scope of an ordinary caretaker government.

Third, and perhaps most philosophically interesting, the government appealed to a general principle of good governance, arguing that its responsibility to the people of Bangladesh required it to address the most serious institutional problems even if the specific constitutional mandate of a caretaker government was ambiguous on whether such actions were authorized. This argument essentially appealed to a theory of governmental responsibility that placed the duty of effective stewardship above the letter of constitutional limitations.

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Each of these arguments has genuine intellectual merit, but each is also vulnerable to serious objections. The first argument proves too much: if the extraordinary circumstances of a political crisis are sufficient to authorize expansive governmental action beyond the constitutional mandate, then the constitutional mandate becomes essentially meaningless, because there will always be sufficient institutional problems to justify expansive action. The second argument, that emergency powers authorize action beyond the caretaker mandate, conflates two distinct constitutional frameworks in ways that are not entirely coherent. The third argument, the appeal to good governance, represents exactly the kind of instrumentalist reasoning that constitutional constraints are designed to prevent, because it allows the government to determine for itself whether the circumstances justify exceeding its mandate.

5.2 The Anti-Corruption Campaign: Philosophical Dimensions

The most visible and most controversial element of the Fakhruddin government's program was its anti-corruption campaign. Over the course of its tenure, the government arrested more than 160 prominent politicians, civil servants, businessmen, and other public figures on charges of corruption and other economic crimes. Among those arrested were former ministers from both major political parties, including ultimately the leaders of both parties, Sheikh Hasina and Khaleda Zia.

The philosophical dimensions of this campaign deserve careful examination. The anti-corruption campaign raises fundamental questions about the proper relationship between law enforcement and political power, about the use of judicial processes in conditions of political polarization, about the distinction between genuine anti-corruption efforts and the political weaponization of corruption charges, and about the legitimacy of using an emergency government's extraordinary powers to address problems that should properly be dealt with through the ordinary democratic and legal processes.

The case for an aggressive anti-corruption campaign was compelling in its basic outline. Bangladesh had accumulated decades of corruption that had severely damaged its institutions, undermined its development, and eroded public trust in governance. The two major parties had both presided over systematic corruption during their respective periods in power, and neither had shown any willingness to address corruption when in office. The captured institutions of the state, including the judiciary, the police, the civil service, and the regulatory bodies, were too deeply compromised by partisan interests and corruption networks to address the problem from within without external impetus.

From this perspective, an independent government with no stake in the protection of established corrupt networks represented a unique opportunity to break the cycle of corruption and impunity. The government's ability to act swiftly and decisively, unconstrained by the partisan considerations that had paralyzed previous efforts to address corruption, was precisely its most valuable asset. If the anti-corruption campaign could create a credible deterrent against future corruption, it might shift the incentive structure for political behavior in ways that would benefit Bangladesh's democratic development in the long run.

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But the campaign also raised serious concerns. The most fundamental was the problem of due process. Many of the arrests were made under emergency powers that suspended the normal protections available to accused persons, including the right to challenge detention through habeas corpus proceedings. The special courts that were created to handle corruption cases operated under procedures that were criticized by lawyers and human rights organizations as falling short of the standards for a fair trial. The sheer scale of the arrests, more than 440,000 people arrested in connection with the anti-corruption drive according to the International Crisis Group, suggested that the campaign had gone well beyond the prosecution of genuinely corrupt individuals and had become an instrument of social control.

The arrest of Sheikh Hasina and Khaleda Zia was particularly controversial. Both women were the leaders of their respective parties and major political figures with significant popular followings. Their detention was framed by the government as part of a principled anti-corruption campaign, but it was widely interpreted as serving the military's "minus two" formula, the alleged strategy of removing both dominant leaders from the political scene in order to create space for a new political order less dominated by the personal rivalries of the two begums.

The "minus two" formula, if it was indeed a deliberate strategy of the military-backed government, represented a profound violation of democratic principles. In a democracy, it is the people, through elections, who determine which leaders should occupy public office. A governmental strategy aimed at removing particular leaders from political life through the use of legal processes is a form of political manipulation that corrupts the very institutions, the judiciary and the prosecution services, that are supposed to be guardians of the rule of law.

The subsequent history of the corruption charges against both Sheikh Hasina and Khaleda Zia is revealing. After Sheikh Hasina's Awami League won the December 2008 elections and she became Prime Minister, the charges against her were largely dropped. After the BNP won back power in subsequent periods and Khaleda Zia returned to prominence, the AL government reinstituted corruption prosecutions against her. This pattern, in which corruption charges track the political cycle rather than reflecting genuine prosecutorial judgments about criminal liability, provides powerful evidence that the anti-corruption campaign of the Fakhruddin period was, at least in part, politically instrumentalized.

5.3 Institutional Reform: The Separation of the Judiciary

One of the most enduring achievements of the Fakhruddin government was the formal separation of the judiciary from the executive, which was implemented during the caretaker period after years of delay. This reform addressed one of the most fundamental structural problems of the Bangladeshi state: the subordination of the lower judiciary to the executive branch, which had severely compromised the independence and impartiality of judicial decision-making.

The subordination of the lower judiciary to the executive had been a persistent feature of Bangladeshi governance, rooted in the colonial administrative tradition of British India, where the district magistrate exercised both executive and judicial functions and where the distinction between administration and justice was much less clearly drawn than in the Westminster constitutional model. After independence, this fusion of executive and judicial functions in the

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lower courts had been challenged but not eliminated, and successive governments had resisted the implementation of full judicial independence, recognizing that subordinate courts under executive control were a useful instrument of political management.

The Supreme Court of Bangladesh had, over many years, issued orders requiring the implementation of judicial separation, but these orders had been consistently ignored by successive governments. The Fakhruddin government, freed from the partisan political calculations that had prevented previous governments from acting, implemented the separation of the judiciary in November 2007. This meant that the magistracy and lower courts were transferred from the control of the Ministry of Law to the control of the Supreme Court, and that the administrative and financial arrangements for the lower judiciary were restructured to provide for genuine institutional independence.

The philosophical significance of this reform cannot be overstated. Judicial independence is not merely a technical institutional arrangement; it is a foundational element of the rule of law, the principle that all persons and all governmental entities are bound by legal rules that are interpreted and applied by an independent judiciary rather than by the government itself. Without judicial independence, the rule of law is merely a slogan; with it, the rule of law becomes a genuine constraint on governmental power and a genuine protection for individual rights.

The separation of the judiciary was perhaps the Fakhruddin government's clearest contribution to Bangladesh's long-term democratic development. Unlike the anti-corruption campaign, which was compromised by its political dimensions, and unlike the extension of the caretaker period, which was constitutionally anomalous, the judicial separation represented a straightforward structural reform that addressed a genuine institutional deficiency without being tainted by partisan political considerations.

5.4 The National Identity Card System and Electoral Reform

Another significant achievement of the Fakhruddin government was the introduction of a national identity card system linked to a biometric voter database. This was a massive administrative undertaking that required the physical registration and biometric data collection of approximately 81 million eligible voters across Bangladesh's 64 districts. The system was designed to eliminate the problem of ghost voters, multiple registrations, and the other forms of voter list manipulation that had plagued previous elections.

The national ID card project was, in many respects, a monument to technocratic governance at its best. It was a complex logistical challenge that required careful planning, substantial resources, and competent implementation across a vast and geographically complex country. The former central bank governor's experience with large-scale institutional projects and with the management of complex technical systems was directly relevant to this challenge. The project was completed in time for the December 2008 elections, and the biometric voter database that resulted played a crucial role in the credibility of those elections.

From a philosophical perspective, the national ID card project raises interesting questions about the relationship between information technology, citizenship, and democratic participation. The

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creation of a comprehensive biometric database of the citizenry is simultaneously a powerful tool for democratic participation and a potential instrument of governmental surveillance and control. The same database that enables genuine elections can also be used to track and monitor citizens in ways that threaten civil liberties.

In the specific Bangladeshi context, the benefits of the project clearly outweighed the risks, because the primary dysfunction that it addressed, a voter list so corrupt as to make genuinely free and fair elections impossible, was a more immediate and pressing problem than the privacy concerns raised by the biometric database. But the broader principle that powerful information technologies are double-edged, capable of both enabling and threatening democratic governance, is worth keeping in mind.

The electoral reform agenda of the Fakhruddin government also included significant changes to the legal framework governing political parties, to the rules for campaign finance, and to the institutional structure of the Election Commission itself. These reforms were designed to create more level playing fields for electoral competition and to reduce the advantages that incumbent governments had historically been able to extract from their control of state resources and institutions.

5.5 Economic Management During the Caretaker Period

Despite the political drama of its tenure, the Fakhruddin government also had to manage Bangladesh's economy, and it did so with considerable competence. The economy faced significant challenges during the caretaker period: rising global food and fuel prices, severe flooding and the devastating Cyclone Sidr in November 2007, and the political uncertainty that depressed both domestic and foreign investment.

The government's macroeconomic management drew heavily on Fakhruddin Ahmed's expertise as an economist and former central bank governor. The key priorities were maintaining fiscal discipline, supporting food security in the context of rising global commodity prices, and sustaining the ready-made garment (RMG) sector, which was Bangladesh's primary export earner and employer of millions of workers, predominantly women.

Bangladesh achieved real GDP growth of 6.2 percent in fiscal year 2008, exceeding projections and demonstrating economic resilience in difficult conditions. Tax revenues rose by 27 percent, reaching 11.4 percent of GDP, and the fiscal deficit was contained at 3.3 percent of GDP, below the target of 4.5 percent. These were creditable macroeconomic outcomes for a country in the midst of a political emergency.

The government's response to the food price crisis of 2008 was more problematic. Rising global rice prices, combined with flooding that damaged domestic production, created serious food security concerns for Bangladesh's poor. The government's decision to increase domestic fuel prices by 40 percent in July 2008 to align them with international prices, while macroeconomically rational, added to the cost-of-living pressures facing ordinary Bangladeshis and contributed to growing public dissatisfaction with the caretaker government.

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The management of relations with the international financial institutions and development partners during the caretaker period was an area where Fakhruddin's international networks proved particularly valuable. His credibility with the World Bank, the IMF, and major bilateral donors helped to maintain a steady flow of development finance and to ensure that Bangladesh continued to receive the international economic support that was critical for its development.

5.6 The Question of Exit: When and How to Return to Democracy

One of the most important and philosophically complex dimensions of the Fakhruddin government's tenure was the question of exit: when, and under what conditions, should the caretaker government transfer power to an elected government? This question was not merely tactical but touched on the deepest issues of democratic legitimacy and governmental responsibility.

The constitutional framework was clear: the caretaker government should have organized elections and transferred power within 90 days. By any constitutional standard, the caretaker government had massively exceeded its mandate. The justification for extending the tenure beyond 90 days rested on the arguments discussed earlier: the extraordinary circumstances of the political crisis, the need for institutional reforms before credible elections could be organized, and the importance of ensuring that elections, when they were held, would genuinely be free and fair.

From a philosophical perspective, the exit question illustrates the tension between what might be called the procedural and substantive dimensions of democratic legitimacy. A purely procedural democrat would insist that elections must be held within the constitutional time frame, regardless of the state of the institutions and regardless of whether the conditions for genuinely free and fair elections are fully in place, because the democratic process itself is the source of legitimacy and any delay represents a usurpation of the people's right to choose their government. A more substantively oriented democrat might accept delays if they are genuinely necessary to ensure that the elections, when held, will be meaningful expressions of popular will rather than merely going through the motions of democratic form.

The Fakhruddin government's approach was essentially substantivist: it argued that the additional time was necessary to create the conditions for genuinely credible elections. The December 2008 elections, held nearly two years after the constitutional deadline, were widely recognized as substantially free and fair, perhaps the most credible elections in Bangladesh's history. This outcome, at least on a consequentialist assessment, provides some ex post justification for the extended tenure.

But the costs of the extended tenure must also be counted. Two years without elected government is a significant deprivation of democratic self-governance. The suppression of political activity, the restrictions on press freedom, the mass arrests, and the suspension of fundamental rights during the emergency period imposed substantial costs on individual liberty and on the quality of Bangladesh's democratic culture. Whether these costs were justified by the benefits of the extended reform program is a genuinely difficult question that does not admit of a simple answer.

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CHAPTER SIX: THEORETICAL FRAMEWORKS FOR UNDERSTANDING INTERIM GOVERNANCE

6.1 The Literature on Transitional Governance: Cross-National Perspectives

The Fakhruddin Ahmed government represents a specific instance of a broader phenomenon: the governance of countries in transition, in the period between an old political order and a new one. This phenomenon has attracted significant scholarly attention in recent decades, as political scientists, constitutional lawyers, and sociologists have grappled with the question of how transitional periods can be managed in ways that maximize the prospects for successful democratic consolidation.

The transitional governance literature draws on a wide range of historical cases: the transition from authoritarianism to democracy in Southern Europe in the 1970s, in Latin America in the 1980s, in Eastern Europe and the former Soviet Union in the late 1980s and 1990s, in sub-Saharan Africa in the 1990s, and in various Asian and Middle Eastern contexts in the early twenty-first century. These diverse cases have generated a rich body of empirical and theoretical analysis that is directly relevant to the Bangladeshi experience.

One of the foundational contributions to this literature is Juan Linz and Alfred Stepan's Problems of Democratic Transition and Consolidation (1996), which analyzed democratic transitions across multiple regions and developed a framework for thinking about the conditions that favor or impede successful democratization. Linz and Stepan identified several key dimensions of the transition and consolidation process, including the mode of transition (whether the old regime collapsed, was negotiated out of existence, or was gradually reformed from within), the nature of the preceding authoritarian regime, the role of civil society, and the institutional design of the new democratic order.

Applied to the Bangladeshi case, the Linz-Stepan framework highlights several important features of the 2007 to 2009 period. The mode of transition in January 2007 combined elements of military intervention with a degree of negotiation with political parties and civil society; it was neither a straightforward collapse of the old regime nor a negotiated pact in the classical transitional justice sense. The preceding period was not a classic authoritarian regime but a dysfunctional democracy in which corrupt electoral processes had created a crisis of legitimacy. And the institutional design challenges of the transition period, particularly the need to reform electoral institutions while simultaneously managing political conflict, were unusually complex.

6.2 Consolidated and Defective Democracies: Wolfgang Merkel's Framework

Wolfgang Merkel's concept of "defective democracies" provides another useful analytical framework for understanding Bangladesh's political situation and the role of the Fakhruddin government. Merkel distinguishes between consolidated liberal democracies and various forms of defective democracy: exclusive democracies (where significant portions of the population are excluded from formal political participation), illiberal democracies (where formal democratic

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procedures coexist with systematic violations of civil and political rights), delegative democracies (where elected leaders govern with minimal institutional accountability), and enclave democracies (where certain sectors or institutions, typically the military, are effectively outside democratic control).

Bangladesh under both the Awami League and the BNP governments of the 1990s and 2000s exhibited several features of defective democracy. The electoral manipulation that both parties practiced in their respective periods in power approximated what Merkel would call an exclusive democracy, in which the formal right to vote was systematically undermined by fraud. The pervasive corruption and the use of state power against political opponents approximated an illiberal democracy. The delegative style of both party leaders, who concentrated power in their own persons rather than governing through genuinely accountable institutions, represented a form of democratic erosion even within formally democratic structures.

The Fakhruddin government can be understood, in Merkel's framework, as an attempt to address the structural deficiencies of Bangladesh's defective democracy through a period of external intervention and institutional reform. The success of this attempt was partial: the December 2008 elections represented a genuine improvement in democratic quality, and some of the institutional reforms of the caretaker period had lasting positive effects. But the underlying political culture, the partisan polarization, the personalist style of party leadership, and the tendency to treat state resources as instruments of partisan advantage, proved deeply resistant to reform.

6.3 Transitional Justice and the Limits of Anti-Corruption Prosecution

The anti-corruption campaign of the Fakhruddin government can be analyzed through the lens of transitional justice theory, which has developed a sophisticated framework for thinking about how societies can address the crimes and injustices of a past regime while building the foundations for a more legitimate future order.

The transitional justice literature has distinguished between several different mechanisms for addressing past wrongs: criminal prosecution, truth commissions, lustration (the exclusion of former regime officials from public office), reparations, and various forms of institutional reform. Each of these mechanisms has different strengths and weaknesses, and the choice among them depends on factors including the nature of the wrongs to be addressed, the political constraints on action, the capacity of the judicial system, and the goals of the transitional process.

In the Bangladeshi case, the Fakhruddin government opted primarily for criminal prosecution as its mechanism for addressing the corruption of the preceding period. This choice had the advantage of signaling a clear departure from the culture of impunity that had allowed corruption to flourish, and of potentially deterring future corruption through the credible threat of prosecution. It also had the advantage of engaging the existing legal framework, at least formally, rather than creating new institutional mechanisms with their own problems of legitimacy.

But criminal prosecution as a transitional justice mechanism also has significant disadvantages, some of which were vividly illustrated by the Bangladeshi experience. Criminal prosecution

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requires meeting high evidentiary standards; when prosecutions are brought in politically charged contexts, there are always concerns about whether the prosecution is genuinely evidence-based or is being driven by political considerations. The due process concerns about the special courts and emergency powers that characterized the Fakhruddin anti-corruption campaign were serious and legitimate.

More fundamentally, criminal prosecution of individual wrongdoers, while potentially effective as a deterrent, does not address the systemic conditions that make corruption possible and indeed rational for political actors. If the political system continues to be organized in ways that create powerful incentives for corruption, prosecuting individual offenders may produce a temporary chilling effect without generating lasting change. This is precisely what the subsequent history of Bangladesh suggests: after the caretaker period ended and competitive politics resumed, corruption quickly re-emerged as a central feature of the political landscape.

6.4 The Habitual Constitutionalism Problem: Bangladesh's Constitutional Culture

One of the most penetrating criticisms of Bangladesh's constitutional development is the argument that the country suffers from what might be called "habitual constitutionalism": a pattern in which constitutional forms are maintained and constitutional language is deployed while the actual conduct of governance consistently departs from constitutional principles. Under this analysis, the problem with Bangladesh's democracy is not primarily legal or institutional but cultural, a failure to internalize the norms and values that give constitutional arrangements their practical content.

This analysis draws on a long tradition of thought that distinguishes between the formal constitution and the living constitution, between the document on paper and the actual pattern of governance that operates in a particular society. The formal constitution of Bangladesh has, at various points in its history, included provisions for parliamentary democracy, federalism, socialist economic organization, and judicial independence. But the actual practice of governance has frequently departed from these formal commitments in dramatic ways.

The political theorist Karl Loewenstein's classic distinction between normative, nominal, and semantic constitutions is useful here. A normative constitution is one that genuinely governs the conduct of political actors, whose provisions are actually respected and followed. A nominal constitution is one that is formally valid but whose provisions do not correspond to the actual political reality, because the social and political conditions necessary for constitutional government have not yet been achieved. A semantic constitution is one that is used merely to legitimize the existing power structure, to give an authoritarian or corrupt regime the appearance of constitutional legitimacy.

Bangladesh's constitutional history can be read as a movement among these three categories, with the constitution sometimes approximating the normative ideal (particularly in the elections of 1996 and 2001 under the caretaker system), sometimes operating as a nominal constitution (during the democratic periods in which formal procedures were maintained without genuine compliance with constitutional values), and sometimes functioning as a semantic constitution

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(particularly during the military governments and the increasingly authoritarian Awami League governments of the 2010s and early 2020s).

The Fakhruddin period represents a particularly interesting moment in this constitutional history, because it was simultaneously a period of dramatic departure from constitutional normality and a period of genuine institutional reform aimed at creating conditions for a more normatively functional constitutional order. It was a constitutionally anomalous episode that was, in some respects, more genuinely constitutionalist in its aspirations than many of the formally constitutional governments that preceded and followed it.

6.5 Robert Dahl's Polyarchy and the Conditions for Democratic Governance

Robert Dahl's concept of polyarchy, developed in his foundational works Polyarchy: Participation and Opposition (1971) and Democracy and Its Critics (1989), provides another useful framework for analyzing Bangladesh's democratic challenges and the context of the Fakhruddin government. Dahl used the term polyarchy to refer to the actually existing institutional arrangements that approximate democratic ideals in modern states: systems characterized by free and fair elections, competitive political parties, freedom of expression, access to alternative sources of information, and freedom of association.

Dahl identified several conditions that he believed were necessary for the successful operation of polyarchal institutions: a low level of socioeconomic inequality, cultural homogeneity or at least the absence of intense subcultural conflict, a civilian-dominated political system, a competitive economy, and a democratic political culture. Where these conditions are absent, he argued, polyarchal institutions tend to be unstable and vulnerable to authoritarian takeover.

Applied to Bangladesh, Dahl's framework reveals some important structural challenges. Bangladesh is characterized by significant socioeconomic inequality, though the most severe poverty has been substantially reduced over the past three decades. The political culture is intensely polarized, with the two major parties and their supporters exhibiting a level of mutual hostility that makes cooperative democratic governance very difficult. And the military has historically played a significant role in political life, providing both the structural context for the 1/11 intervention and an ongoing shadow over the civilian political process.

These structural conditions do not make democracy impossible in Bangladesh; Dahl's conditions are enabling rather than necessary, and democracies have survived and even thrived under various forms of adversity. But they do suggest that the institutional design challenges of Bangladesh's democratic system are genuinely formidable, and that building sustainable democratic governance in this context requires sustained attention to both institutional engineering and cultural change.

6.6 Social Contract Theory and the Legitimacy of the Caretaker System

The philosophical tradition of social contract theory provides yet another lens through which to analyze the legitimacy questions raised by the Fakhruddin government and the caretaker system more generally. Social contract theory, associated with thinkers including Hobbes, Locke,

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Rousseau, and in the modern period John Rawls, holds that the legitimacy of governmental authority derives from some form of agreement or consent among those who are governed.

Different versions of social contract theory give different accounts of the nature and basis of this agreement. Hobbes's version is an agreement by which individuals give up their natural freedom to an all-powerful sovereign in exchange for the protection of their lives and property. Locke's version is a more limited agreement by which individuals consent to government on the condition that it protects their natural rights; if the government systematically violates these rights, the people retain the right to revolution. Rousseau's version locates sovereignty in the "general will," the common good of the political community as a whole, rather than in the aggregated preferences of individuals.

John Rawls's contractarian theory of justice, developed in A Theory of Justice (1971) and subsequent works, offers a particularly sophisticated framework for thinking about the legitimacy of institutional arrangements. Rawls argues that the principles of justice governing the basic structure of society should be those that rational persons would choose from behind a "veil of ignorance," not knowing their own social position, natural talents, or conception of the good. This hypothetical contract provides a standard against which actually existing institutional arrangements can be assessed.

Applied to the caretaker government system, a Rawlsian analysis would ask whether rational persons, not knowing whether they would be members of the governing party or the opposition, would choose to have such a system. The answer seems fairly clearly yes: persons who did not know which party they would belong to would prefer a system in which elections are organized by a neutral authority over one in which elections are organized by the incumbent party, because the former gives them a better chance of having their votes genuinely counted regardless of which party they support.

The 13th Amendment, on this Rawlsian analysis, represents a just constitutional arrangement: it is the kind of institutional design that rational self-interested individuals would choose behind the veil of ignorance. Its abolition through the 15th Amendment, by contrast, appears unjust: it represented the ruling party's imposition of an electoral framework that advantaged itself, a choice that rational individuals would not make if they did not know whether they would be in the ruling party or the opposition.

This Rawlsian analysis supports the jurisprudential conclusion reached by Bangladesh's Supreme Court in its 2024 and 2025 judgments: that the caretaker system is a constitutional essential that cannot legitimately be abolished by any parliamentary majority, because it is the kind of institutional arrangement that all reasonable citizens, regardless of their partisan affiliations, have good reason to support.

CHAPTER SEVEN: FAKHRUDDIN AHMED'S INTELLECTUAL LEGACY AND THE THEORY OF TECHNOCRATIC CARETAKING

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7.1 The Economist as Statesman: The Intersection of Technical Knowledge and Political Leadership

Fakhruddin Ahmed's trajectory from academic economist to central bank governor to chief adviser represents a particular model of political leadership that has parallels in other countries and historical periods but that has its own distinctive features in the Bangladeshi context. The idea that technical expertise, particularly economic expertise, qualifies a person for senior governmental leadership has become increasingly significant in the contemporary world, as the complexity of modern governance has created growing demand for leaders who can navigate intricate technical domains.

The most prominent parallel is perhaps the career of Mario Draghi, the Italian technocrat who served as president of the European Central Bank (2011-2019) and then as Prime Minister of Italy (2021-2022), using his economic credibility to lead a national unity government during a period of economic and political crisis. Like Fakhruddin Ahmed, Draghi came to high political office not through the democratic competition of electoral politics but through the appointment of a political consensus that recognized his technical expertise and his reputation for independence from partisan interests.

Other examples include Mario Monti, another Italian technocrat who led a government of national unity during the euro crisis; Lucas Papademos, the Greek central banker who served briefly as Prime Minister during the Greek debt crisis; and more recently various technocratic or expert-dominated governments that have been installed in troubled states, from Libya to Ukraine, where political institutions have failed and technical expertise has been seen as the only viable basis for effective governance.

What these cases have in common is the belief that technical expertise provides a basis for governmental authority that is at least partially independent of electoral legitimacy, that competent management of complex policy domains can substitute, at least temporarily, for the democratic mandate that constitutes the normal basis for governmental power in liberal democratic systems.

The philosophical justification for this view is not entirely without merit. In complex modern societies, the decisions that governments must make are often genuinely technical in nature, requiring specialized knowledge that electoral competition does not test and that elected politicians often do not possess. If we insist that all governmental authority must rest on democratic election, we risk consigning important policy domains to management by democratically accountable but technically incompetent officials, with potentially disastrous consequences.

But the critics of technocracy are equally compelling. The claim that governmental authority can rest on technical expertise alone ignores the extent to which every significant policy decision involves value choices that cannot be resolved by technical analysis alone. The choice between different policy options always involves trade-offs among competing values and interests: between economic efficiency and social equity, between stability and dynamism, between environmental protection and economic growth. These trade-offs cannot be resolved by appeal to

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technical expertise; they require a political judgment about which values should take priority, and democratic legitimacy is the only framework within which such judgments can be made in a way that all citizens have reason to accept.

7.2 The Princeton Legacy: Development Economics and Institutional Theory

Fakhruddin Ahmed's doctoral training at Princeton University in the 1970s placed him within a specific intellectual tradition that has continued to develop in ways directly relevant to the challenges he faced as Chief Adviser. Princeton's economics department in the 1970s was home to some of the most important thinkers in development economics and international finance, and the intellectual currents to which Ahmed was exposed there shaped his understanding of the relationship between economic institutions and development outcomes.

One of the most important intellectual developments in development economics in the period following Ahmed's doctoral training was the emergence of the new institutional economics, associated with scholars including Douglass North, Mancur Olson, and later Daron Acemoglu and James Robinson. This school of thought, which has achieved dominant influence in the field over the past three decades, argues that the quality of economic and political institutions is the primary determinant of long-run economic development. Countries with strong property rights, effective contract enforcement, constrained government, and genuinely competitive political systems tend to achieve sustained economic growth, while countries with extractive institutions, in which economic and political power is concentrated in the hands of a small elite that uses this power to extract resources from the rest of the population, tend to stagnate or decline.

This institutional economics framework is directly relevant to Bangladesh's development challenges and to the Fakhruddin government's reform agenda. Bangladesh's persistent corruption, its weak judicial institutions, its highly politicized civil service, and its pattern of extractive governance under both major parties fit squarely within the Acemoglu-Robinson picture of institutions that impede economic development. The reforms of the caretaker period, including the separation of the judiciary, the anti-corruption drive, and the electoral reforms, can be understood as attempts to shift Bangladesh's institutional landscape from the extractive toward the more inclusive end of the spectrum.

Whether the reforms of the Fakhruddin period actually achieved this institutional shift is a question that the subsequent history suggests should be answered with considerable skepticism. The institutional economists emphasize that institutional change is typically a slow and contested process, driven by the interests of those who benefit from or are harmed by existing institutions rather than by the preferences of technocratic reformers. Powerful groups that benefit from extractive institutions resist change, using their political, economic, and coercive resources to protect the arrangements from which they profit. Genuine institutional transformation requires either a decisive shift in the balance of power between those who benefit from extractive institutions and those who are harmed by them, or a period of sustained political commitment to reform by governments that are insulated from the pressures of those who benefit from the status quo.

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The Fakhruddin government had the advantage of being relatively insulated from immediate partisan pressures, but its reforms were undertaken in a political environment where the underlying power balance had not fundamentally changed. Once the elected politicians returned to power, they had both the incentive and the capacity to reverse or subvert the institutional reforms of the caretaker period. This is precisely what happened in the case of the most important reform of all, the caretaker system itself, which was abolished by the Awami League government in 2011 when it proved politically convenient to do so.

7.3 The Bangladesh Bank Experience: Financial Regulation as Preparation for Statecraft

Fakhruddin Ahmed's period as Governor of Bangladesh Bank from October 2001 to April 2005 was, in many respects, the most direct preparation for his role as Chief Adviser. The governorship of a central bank is itself a form of high-level executive management, requiring the governance of a complex institution, the management of technical policy in a politically charged environment, and the navigation of relationships with both the government and the international financial community.

The reforms that Ahmed implemented at Bangladesh Bank were significant and lasted well beyond his tenure. The floating of the exchange rate with minimal volatility was a major technical achievement that required careful management of the transition from a fixed to a flexible exchange rate without triggering a currency crisis. The introduction of interest rate flexibility, the development of new financial market instruments including securitization, and the implementation of stronger corporate governance requirements for the banking sector all represented substantive improvements in Bangladesh's financial system.

Perhaps most importantly for his subsequent role as Chief Adviser, Ahmed's tenure as Bangladesh Bank Governor gave him hands-on experience of working with and attempting to reform complex governmental institutions in a politically challenging environment. He learned at first hand about the difficulty of implementing technical reforms when political interests are arrayed against them, about the importance of building coalitions of support for reform within the institutions being reformed, and about the role of international credibility and external pressure in enabling domestic reform.

This experience was directly applicable to the institutional reform agenda of the caretaker government. The challenge of reforming the Election Commission, the Anti-Corruption Commission, and the civil service during the caretaker period was structurally similar to the challenge of reforming the banking sector during the Bangladesh Bank governorship: in both cases, the task was to introduce more rigorous standards and more genuinely independent institutional governance in organizations that had previously been subordinated to political control.

7.4 The World Bank Frame: International Development Norms and Domestic Governance

Fakhruddin Ahmed's twenty-plus years at the World Bank gave him not only technical expertise and international networks but also a particular institutional culture and set of normative commitments that shaped his approach to governance. The World Bank, despite its many

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controversies and the significant evolution of its institutional culture over the decades, has consistently promoted certain governance principles: transparency, accountability, the rule of law, sound fiscal management, and the creation of an enabling environment for private economic activity.

These principles, which became increasingly central to the World Bank's approach from the 1990s onward as the institution developed its "good governance" agenda, align closely with the reform priorities that the Fakhruddin government pursued. The anti-corruption campaign, the judicial separation, the electoral reforms, the fiscal discipline: all of these reflect a governance agenda that is broadly consonant with the international development community's conception of good governance.

This alignment raises interesting questions about the relationship between international development norms and domestic governance in developing countries. Critics of the World Bank's good governance agenda argue that it represents a form of neo-colonial imposition, in which international institutions dominated by wealthy Northern countries use their financial leverage to require developing countries to adopt governance models that reflect Northern institutional preferences rather than the specific conditions and traditions of the countries concerned. Defenders of the good governance agenda argue that transparency, accountability, and the rule of law are not culturally specific values but universal requirements for effective governance, and that their promotion by international institutions benefits the populations of developing countries even when it challenges the interests of the political elites in those countries.

Fakhruddin Ahmed's personal trajectory, from the Bangladeshi civil service to the World Bank and back to Bangladesh, positioned him in a complex way in relation to this debate. He was simultaneously a product of the international development community and a Bangladeshi national with deep roots in his country's culture and history. His approach to governance during the caretaker period reflected both of these dimensions: the international development framework he had absorbed at the World Bank, and the specific knowledge of Bangladesh's institutional history, political culture, and social conditions that came from his own background and experience.

CHAPTER EIGHT: THE CARETAKER GOVERNMENT SYSTEM: COMPARATIVE CONSTITUTIONAL ANALYSIS

8.1 Comparative Perspectives on Electoral Management Bodies

Bangladesh's Non-Party Caretaker Government system is unusual in comparative constitutional terms: most democracies rely on permanent, independent election commissions rather than temporary caretaker governments to ensure the neutrality of electoral administration. Understanding how Bangladesh's system compares to the approaches used in other countries illuminates both its distinctive features and the specific problems it was designed to address.

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The dominant model for electoral management in established democracies is the independent permanent election commission, a specialized governmental body that is constitutionally mandated to be independent of partisan political control and that is responsible for organizing elections on an ongoing basis. The Election Commission of India, established under Article 324 of the Indian Constitution, is perhaps the most celebrated example of this model in South Asia. The Indian Election Commission has, particularly under the leadership of T.N. Seshan in the 1990s, demonstrated that an independent election commission with genuine institutional authority can effectively enforce electoral rules against incumbent governments and ensure a substantial level of electoral integrity.

The key features that enable the Indian Election Commission to function effectively are its constitutional status (it is established directly by the constitution rather than by ordinary legislation, giving it protection against political interference), the security of tenure of the Chief Election Commissioner (who can only be removed by the same procedure used to remove Supreme Court judges), its administrative control over the election machinery during election periods, and its accumulated institutional authority, which enables it to challenge governments and political parties from a position of institutional strength.

Bangladesh's experience suggests that these enabling conditions for effective electoral management were not adequately present in the early years of its democracy. The Election Commission of Bangladesh lacked the constitutional protection, the security of tenure, the administrative control, and the accumulated institutional authority that would have enabled it to perform effectively. The caretaker government system was designed to compensate for these institutional deficiencies by removing the incumbent government from the equation during elections, replacing it with a neutral authority that had no stake in the electoral outcome.

The comparison with India is instructive but requires qualification. India's Election Commission has operated effectively in the context of a political culture that, despite its many problems, has generally respected the principle that election results must be accepted even when they go against the incumbent government. In Bangladesh, this norm of electoral loserism was much more weakly established, and the culture of winner-take-all politics created more intense incentives for manipulation. The caretaker system can thus be understood as a response not only to institutional weakness but also to a specific political culture that made effective independent administration of elections unusually difficult.

8.2 Historical Precedents: Caretaker and Transitional Governance Mechanisms

The concept of a temporary, neutral authority to oversee elections has historical precedents in various parts of the world, though the specific institutional form varies considerably across cases.

In Pakistan, the constitutional provision for a caretaker government to oversee elections, introduced after the democratic transition of the early 1990s, has operated with mixed results. Pakistani caretaker governments have sometimes been genuinely neutral and have occasionally organized credible elections, but the system has also been subject to manipulation and has occasionally served as a vehicle for extra-constitutional interference in the political process. The comparison with Pakistan's experience is particularly relevant for Bangladesh, given the shared

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institutional heritage of the pre-1971 period and the similar problems of civil-military relations and political polarization.

In various African contexts, transitional governments have been established to manage political transitions following the collapse of authoritarian regimes or the resolution of civil conflicts. The transitional government of National Unity in South Africa during the transition from apartheid (1994), the various transitional administrations established in conflict-affected states like Sierra Leone, Liberia, and the Democratic Republic of Congo, and the caretaker arrangements that have been periodically installed in various West African states following military coups all represent instances of transitional governance mechanisms that share some features with the Bangladeshi caretaker system.

In Latin America, the tradition of "consensual coups" or "institutional coups," in which political and institutional actors combine to remove an elected government that has lost legitimacy without formally declaring a military takeover, has produced various forms of transitional governance. The Brazilian congressional vote to remove President Dilma Rousseff in 2016, the Honduran military removal of President Manuel Zelaya in 2009, and various other cases of extra-constitutional presidential removals have led to transitional governance arrangements that raise constitutional questions similar to those posed by the Bangladeshi caretaker government.

These comparative cases suggest that the problem of governing during political transitions and the need for institutional mechanisms to manage such transitions are not unique to Bangladesh but are widespread features of the political landscape of developing democracies. The specific solutions adopted in different contexts reflect the particular institutional histories, political cultures, and constitutional frameworks of individual countries. Bangladesh's caretaker system was a locally specific response to locally specific problems, but it connects to a broader global challenge of how to maintain democratic governance during periods of political crisis.

8.3 Constitutional Moments and Constitutional Change: Ackerman's Framework

Bruce Ackerman's theory of constitutional moments, developed in his monumental We the People series, provides a rich framework for understanding episodes of transformative constitutional change like the adoption of the 13th Amendment in Bangladesh in 1996 and its subsequent abolition and restoration. Ackerman distinguishes between "constitutional politics," the higher lawmaking that occurs at exceptional moments when the people mobilize to redefine the fundamental terms of their political life, and "normal politics," the ordinary processes of legislation and administration that operate within the constitutional framework established by these higher lawmaking moments.

For Ackerman, genuine constitutional moments require three conditions: first, a period of widespread popular mobilization around constitutional questions; second, a formal process through which the popular will is expressed in a constitutional change; and third, a subsequent period of consolidation in which the new constitutional arrangement is accepted and normalized across the political spectrum. The adoption of the 13th Amendment in Bangladesh arguably meets these criteria: it was preceded by a massive popular mobilization for electoral reform,

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embodied in the constitutional amendment, and initially consolidated through the credible elections of 1996 and 2001.

The abolition of the 13th Amendment through the 15th Amendment in 2011, by contrast, failed to meet Ackerman's criteria for a legitimate constitutional moment. There was no widespread popular mobilization demanding the abolition of the caretaker system; indeed, public opinion surveys suggested that the overwhelming majority of Bangladeshis supported the caretaker system. The abolition was the product of ordinary legislative politics within a parliamentary majority, not a higher lawmaking moment reflecting genuine popular constitutional choice. And the abolition was not consolidated; it remained deeply contested and was ultimately reversed by the Supreme Court in 2025.

Ackerman's framework thus supports the jurisprudential conclusion that the abolition of the 13th Amendment was constitutionally illegitimate, not because it violated a specific constitutional provision (the amendment procedure of Article 142 was formally followed) but because it did not represent a genuine expression of the constituent power of the people in the way that the original adoption of the 13th Amendment had done.

8.4 The Separation of Powers and Its Distortions in Bangladesh

The principle of separation of powers, articulated by Montesquieu in The Spirit of Laws (1748) and embodied in various forms in the constitutional frameworks of liberal democracies, holds that governmental power should be distributed among distinct institutions, each exercising one of the three basic governmental functions: legislative, executive, and judicial. This distribution is designed to prevent the dangerous concentration of power in a single person or institution and to create a system of checks and balances in which each branch constrains the others.

In Bangladesh's constitutional framework, the separation of powers is formally maintained: there is a Parliament that exercises legislative power, a government that exercises executive power, and a judiciary that exercises judicial power. But the actual distribution of power in Bangladeshi governance has historically been much less balanced. The executive, particularly in the person of the Prime Minister, has been extraordinarily powerful, dominating both the legislative process and, through various formal and informal mechanisms, the judicial system.

The dominance of the executive in Bangladesh reflects several structural features of the political system. The strong party discipline that characterizes the Bangladeshi parliamentary system means that Parliament rarely functions as a genuine check on executive power; members of the ruling party almost invariably vote in support of the government's positions, regardless of the merits of the legislation being considered. The historical subordination of the lower judiciary to the executive, which was partially addressed by the judicial separation implemented by the Fakhruddin government, meant that the courts were not effectively checking executive overreach. And the highly personalistic leadership styles of both Sheikh Hasina and Khaleda Zia concentrated governmental authority in ways that further eroded whatever checks and balances the formal constitutional structure might have provided.

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The caretaker government of Fakhruddin Ahmed, paradoxically, represented in some ways a more genuine separation of powers than the elected governments that preceded and followed it. The caretaker government was not beholden to a parliamentary majority and did not have the party-political incentives that cause elected governments to concentrate power. Its relationship with the military was complex and problematic, but it maintained a degree of independence from direct military control in its administrative decisions. And its reforms, particularly the judicial separation, explicitly addressed one of the most important distortions in Bangladesh's separation of powers.

CHAPTER NINE: THE ANTI-CORRUPTION PHILOSOPHY: LEGAL THEORIES AND PRACTICAL REALITIES

9.1 Corruption as a Constitutional Problem: Theoretical Frameworks

The anti-corruption agenda of the Fakhruddin government was not merely a practical policy initiative but rested on implicit theoretical claims about the relationship between corruption, the rule of law, and democratic governance. These theoretical claims deserve explicit examination, because they connect to fundamental questions in legal and political philosophy about the nature of law, the purpose of the state, and the conditions for just governance.

Corruption, in its most general sense, refers to the abuse of public office or trust for private gain. This definition encompasses a wide range of phenomena, from petty bribery of police officers by ordinary citizens seeking to avoid traffic fines, to grand corruption involving the systematic looting of state resources by senior officials, to what has been called "state capture," the process by which economic or political elites effectively take control of the institutions of the state and use them to advance their private interests rather than the public good.

From a legal theory perspective, corruption represents a fundamental violation of the rule of law. The rule of law, as conceived in the liberal constitutional tradition, requires that legal rules be applied uniformly and impersonally, without regard to the personal identity, social position, or political connections of those subject to the law. Corruption systematically violates this requirement: it creates a system in which outcomes depend not on what the law says but on how much an individual is willing to pay, or on the individual's political connections, or on the individual's ability to threaten those in positions of authority.

From a democratic theory perspective, corruption represents a violation of political equality, the principle that all citizens should have equal voice in the political process. When political outcomes are determined by the ability to pay or by the closeness of one's connections to the ruling party, the formal equality of the ballot box is rendered meaningless in practice. The citizen who pays no bribes and has no political connections effectively has less voice in the actual conduct of governance than the citizen who can afford to pay for favorable treatment.

From a developmental economics perspective, corruption represents an inefficiency in the allocation of resources that has direct negative effects on economic growth and poverty

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reduction. When businesses must pay bribes to operate, when contracts go to politically connected firms rather than the most competent bidders, when public investment decisions are driven by opportunities for kickbacks rather than genuine developmental priorities, the result is a misallocation of resources that reduces the overall productivity of the economy and imposes disproportionate burdens on the poor, who lack the resources to pay for favorable treatment and who rely most heavily on public services that corruption degrades.

9.2 The Anti-Corruption Commission: Institutional Design and Performance

The Anti-Corruption Commission (ACC) of Bangladesh, which played a central role in the anti-corruption campaign of the Fakhruddin period, was established in 2004 under the Anti-Corruption Commission Act, though its effectiveness was severely limited under the BNP government that created it. The Fakhruddin government sought to transform the ACC from a nominal institution into a genuinely independent and effective anti-corruption agency, giving it the resources, the legal powers, and the institutional authority to pursue corruption cases against powerful political figures.

The design of an effective anti-corruption institution is one of the most challenging problems in institutional engineering, and the literature on anti-corruption policy is replete with examples of institutions that were established with high aspirations but that either failed to achieve significant results or were eventually captured by the political interests they were supposed to combat. The most celebrated success story in anti-corruption institutional design is the Independent Commission Against Corruption (ICAC) of Hong Kong, established in 1974 in response to pervasive police and political corruption, which achieved a remarkable transformation of Hong Kong's governance culture over a period of two to three decades.

The ICAC's success reflected several key features of its design: it was genuinely independent of the executive and reported directly to the Governor; it had extensive investigative powers and a large, well-resourced investigative staff; it combined investigation and prosecution with a significant prevention and community education function; and it operated in a society that, despite its corruption problem, had sufficient rule-of-law culture to support the prosecution of powerful individuals when genuine evidence was adduced against them.

Bangladesh's ACC under the Fakhruddin government attempted to replicate some of these features, but it operated in a much more challenging environment. The rule-of-law culture in Bangladesh was much weaker than in Hong Kong; the judicial system was less independent and less reliable; and the political environment was much more polarized, making it very difficult to pursue anti-corruption cases in a genuinely non-partisan way. The result was an anti-corruption campaign that achieved some genuine successes in prosecuting individual wrongdoers but that also exhibited the pathologies described above: politically selective prosecution, due process concerns, and an eventual reversal of many of its results when elected governments returned to power.

9.3 The Corruption-Development Nexus: Empirical and Theoretical Dimensions

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The relationship between corruption and economic development is one of the most extensively studied questions in development economics, and the empirical evidence on this relationship is relevant to understanding the developmental rationale for the Fakhruddin government's anti-corruption agenda.

The dominant view in the academic literature, supported by a substantial body of empirical research, is that corruption has significant negative effects on economic development. Studies using various measures of corruption and controlling for other determinants of economic performance have consistently found that higher levels of perceived corruption are associated with lower rates of economic growth, lower levels of private investment, lower quality of public services, and worse outcomes on various measures of human development including education, health, and poverty reduction.

The mechanisms through which corruption harms development are several. Corruption distorts investment decisions, directing resources toward sectors and projects that offer the greatest opportunities for kickbacks rather than the greatest developmental value. It increases the effective costs of doing business, raising the price of entry into markets and imposing an ongoing tax on economic activity that reduces firms' competitiveness and inhibits growth. It degrades public services, as resources intended for service delivery are diverted to private gain, and as the quality of personnel in public institutions is reduced by the displacement of merit-based selection by patronage-based appointment. And it erodes public trust in governmental institutions, reducing citizens' willingness to pay taxes and to cooperate with public authority in the ways that effective governance requires.

Bangladesh provides a particularly vivid illustration of these mechanisms. The Transparency International rankings that placed Bangladesh as the most corrupt country in the world for four consecutive years reflected a daily reality of pervasive bribery and extortion that imposed enormous costs on businesses, on ordinary citizens accessing public services, and on the economy as a whole. The Fakhruddin government's anti-corruption campaign was thus motivated not only by a concern for justice and the rule of law but also by a development rationale: reducing corruption was seen as essential to improving the investment climate, increasing the effectiveness of public spending, and creating the conditions for sustained economic growth.

Whether the anti-corruption campaign actually produced lasting improvements in Bangladesh's governance quality is doubtful, given the subsequent trajectory of governance under elected governments. The PKSF (Palli Karma-Sahayak Foundation) work that Fakhruddin Ahmed had been managing before his appointment as Chief Adviser, providing apex financial support to microfinance institutions, represented a different model of development intervention, one focused on expanding economic opportunities for the poor rather than on top-down institutional reform. The contrast between these two approaches to development, the institutional reform model and the direct poverty alleviation model, reflects genuine intellectual debates in development economics that remain unresolved.

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CHAPTER TEN: THE DECEMBER 2008 ELECTIONS: DEMOCRATIC TRANSITION AND ITS ASSESSMENT

10.1 The Organization of Elections: Technical and Political Dimensions

The holding of genuinely free and fair elections in Bangladesh in December 2008 was the primary mandate of the Fakhruddin caretaker government and, by almost all accounts, the dimension of its work in which it achieved its greatest success. Understanding how those elections were organized, what made them credible, and what their conduct reveals about the conditions for electoral integrity is important both for assessing the Fakhruddin government's legacy and for drawing lessons relevant to democratic development more broadly.

The foundation for the 2008 elections was laid through the extensive preparatory work of the preceding two years: the compilation of a new voter list using biometric data linked to national identity cards, the reform of the Election Commission and the appointment of new commissioners with stronger credentials for independence, the development of a new regulatory framework for political party and campaign finance, and the extended logistical planning necessary to manage elections across a densely populated country of more than 150,000 square kilometers.

The voter registration process was particularly remarkable. The effort to register approximately 81 million voters using biometric identification represented one of the largest such undertakings in any developing country at that time. The process involved deploying thousands of registration teams across the country, collecting fingerprint and photograph data, and creating a centralized database that could be used to verify voters at polling stations. The technical challenges were enormous, and the implementation was not without flaws, but the overall result was a voter list of substantially greater accuracy and integrity than had existed in any previous Bangladeshi election.

The new Election Commission, with fresh leadership and a clearer mandate for independence, played a much more active role in managing the electoral process than any of its predecessors had done. The Commission issued detailed code of conduct regulations, monitored compliance, and used its regulatory powers to address violations by political parties and candidates. It also negotiated with the political parties to create conditions under which both the Awami League and the BNP would participate in the elections, resolving the political standoff that had made credible elections impossible under the previous caretaker government.

The negotiations that led to the resumption of normal political activity and the eventual participation of the major parties in the December 2008 elections were complex and extended over many months. Sheikh Hasina was released from detention in June 2008, after serving approximately eleven months. Khaleda Zia was released in September 2008, after about eleven months as well. Both releases were accompanied by understandings about the conditions under which the parties would participate in the elections, though the specific terms of these understandings remain disputed.

10.2 The Election Results and Their Constitutional Significance

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The elections of 29 December 2008 produced a decisive and clear result. The Awami League-led Grand Alliance won 263 of 300 parliamentary seats, a landslide that gave it more than the two-thirds majority required for constitutional amendment. The BNP and its allies won only 30 seats, a humiliating defeat from which the party would struggle to recover. The Jatiya Party of former President Ershad, running in alliance with the Awami League, won 27 seats.

The scale of the Awami League victory reflected both genuine popular support for the party and its leader Sheikh Hasina, who was seen as the candidate of democratic normalcy after the two years of caretaker government, and a reaction against the BNP, whose governance record from 2001 to 2006 had left a deeply negative impression. International election observers, including missions from the EU, the Commonwealth, the United Nations, and various national governments, uniformly pronounced the elections substantially free and fair.

The transfer of power from the Fakhruddin caretaker government to the newly elected Awami League government of Sheikh Hasina on 6 January 2009 completed the transition that the 1/11 intervention had begun. Whatever the constitutional anomalies of the intervening period, the outcome was the installation of a government chosen through genuinely competitive elections with high levels of voter participation and international credibility. This outcome fulfilled the primary mandate of the caretaker government and provided the clearest available measure of its success.

The irony of the subsequent political history is bitter. The Awami League government, elected with the most credible mandate in Bangladesh's history, proceeded to abuse its power in ways that progressively undermined the very democratic framework that its election had restored. The 15th Amendment of 2011, which abolished the caretaker system, was the most consequential of these abuses, removing the institutional safeguard that had made the 2008 elections credible and clearing the way for the fraudulent elections of 2014, 2018, and 2024 that eventually triggered the mass uprising of August 2024 and Sheikh Hasina's flight from the country.

The trajectory from the 2008 elections to the 2024 uprising encapsulates one of the most fundamental challenges of democratic development: the tendency of electorally successful parties to use their power to entrench themselves and to dismantle the democratic constraints that had allowed them to come to power in the first place. This self-reinforcing dynamic of democratic erosion, identified by political scientists as "democratic backsliding" or "autocratization," has become one of the central concerns of contemporary comparative politics literature.

10.3 The Post-Caretaker Period: Fakhruddin Ahmed's Withdrawal from Public Life

After the transfer of power in January 2009, Fakhruddin Ahmed effectively withdrew from Bangladeshi public life. He did not seek elected office, did not publicly comment extensively on the political developments of subsequent years, and maintained a low profile that was consistent with his pre-caretaker character as a technocrat rather than a politician.

This withdrawal from public life is itself an interesting biographical and philosophical datum. The technocrat who reluctantly assumes extraordinary power in a crisis and then relinquishes it

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as soon as the crisis is resolved represents a political type that is distinguished from the politician who uses governmental power primarily as a vehicle for personal advancement. Whether Fakhruddin Ahmed's withdrawal reflected genuine contentment with his role as a temporary steward or was in part the product of the difficult circumstances of his tenure, including the criticisms he faced and the constitutional controversies that surrounded his government, is impossible to say with certainty.

His withdrawal also reflects a characteristic of technocratic leadership that distinguishes it from political leadership: the technocrat's claim to authority is intrinsically temporary, tied to a specific problem or crisis, and does not naturally generate the kind of ongoing popular constituency that sustains political careers. Once the crisis had been resolved and the elections had been held, the basis for Fakhruddin's authority evaporated, and there was no natural path for him to continue in public life.

CHAPTER ELEVEN: THE CONSTITUTIONAL LEGACY: FROM 2009 TO 2026

11.1 The 15th Amendment and the Betrayal of Democratic Promise

The Awami League's decision to abolish the caretaker system through the 15th Amendment in June 2011 can be understood as a rational political calculation, but it was a calculation that prioritized the party's short-term electoral interests over the long-term health of Bangladesh's democratic system. This prioritization of party interest over democratic principle represents exactly the kind of self-interested constitutional manipulation that the caretaker system had been designed to prevent.

The juridical basis for the abolition of the caretaker system was the 2011 Appellate Division judgment that declared the 13th Amendment unconstitutional. This judgment, delivered by a court under the leadership of Chief Justice ABM Khairul Haque, reasoned that the caretaker system was inconsistent with democracy because it entrusted governmental power to unelected officials. The reasoning, while superficially plausible, was widely criticized as deeply flawed.

The Supreme Court judgment of November 2025, which reversed the 2011 decision in its entirety, characterized the 2011 judgment as "tainted by several cited errors apparent on the face of the record." The 2025 court described the 2011 judgment as having been influenced by the legislative pressure of the parliamentary majority that had an interest in abolishing the caretaker system. This characterization amounted to an allegation that the 2011 court had not acted as an independent judicial institution but had responded to political pressure in issuing its decision, a deeply troubling indictment of judicial integrity.

The full judgment of the Appellate Division in March 2026, building on the November 2025 short order, developed an extensive philosophical analysis of constituent power, democratic legitimacy, and the basic structure doctrine that provided the theoretical foundations for restoring the 13th Amendment. The court distinguished between parliament's ordinary amendment power and the constituent power of the people, arguing that the 13th Amendment, as an expression of

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constituent power triggered by mass popular mobilization, could not be legitimately reversed through the ordinary amendment procedure without an equivalent expression of popular will.

11.2 The August 2024 Uprising and the Reinvention of Constitutional Legitimacy

The mass uprising of July and August 2024, which toppled the government of Sheikh Hasina after three decades in which she had been the dominant figure of Bangladeshi politics, represented the most dramatic episode of popular constitutional agency in Bangladesh's history since the liberation war of 1971. The uprising was triggered by student protests against a government quota system for civil service appointments, but it rapidly expanded into a mass movement against the entire system of governance that the Awami League had constructed over fifteen years of increasingly authoritarian rule.

The uprising resulted in Sheikh Hasina's resignation and departure from Bangladesh on 5 August 2024, followed by the dissolution of Parliament and the appointment of Muhammad Yunus as head of an interim government under Article 106 of the Constitution. The Fakhruddin Ahmed period and the August 2024 uprising thus bookend a era of Bangladeshi democratic history that began with promise and ended in constitutional crisis, passing through the deterioration of democratic institutions and the ultimate collapse of an authoritarian government that had once been elected with an overwhelming mandate.

The constitutional questions raised by the 2024 interim government are strikingly similar to those raised by the Fakhruddin caretaker government. Both governments came to power under constitutionally anomalous circumstances, both claimed legitimacy on the basis of necessity and popular support, both undertook reforms that went beyond what a strictly mandated caretaker role would authorize, and both faced the fundamental question of how to build a path from extraordinary governance back to ordinary democratic legitimacy.

The 2024 to 2026 period has seen the development of new constitutional jurisprudence, new institutional reforms, and new political agreements that collectively represent Bangladesh's most serious attempt to address the structural problems that have prevented the consolidation of democratic governance. Whether these efforts will succeed where previous attempts have failed remains to be seen. The recent judgment of the Appellate Division restoring the 13th Amendment, delivered in November 2025 and published in full in March 2026, represents at least a powerful judicial articulation of the principles that a sustainable democratic constitutional order in Bangladesh must embody.

11.3 The Theoretical Legacy: Constituent Power and Democratic Legitimacy in Contemporary Bangladesh

The jurisprudential developments of 2024 to 2026 have given Bangladesh's constitutional jurisprudence a degree of theoretical sophistication that was largely absent from earlier constitutional adjudication. The courts have engaged with questions of constituent power, basic structure, democratic legitimacy, and the proper relationship between judicial and popular authority in ways that reflect serious engagement with contemporary constitutional theory.

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The concept of constituent power as articulated in the Appellate Division's 2025 judgment draws on a tradition of constitutional theory that has been developed most fully in the European context, particularly in the German constitutional tradition that produced figures like Bockenforde, Carl Schmitt, and more recently Jurgen Habermas. The idea that the constituent power of the people is not exhausted by the constitutional text but remains latent and can be reactivated in moments of constitutional breakdown resonates with Habermas's theory of "constitutional patriotism," the idea that democratic citizens maintain an ongoing commitment to the constitutional principles of their political community that is distinct from and more fundamental than their commitment to any particular constitutional text.

The connection between this theoretical framework and the practical constitutional history of Bangladesh is not merely academic. The mass uprisings of 1990, which ended military rule and led to the restoration of parliamentary democracy, and of 2024, which ended the Awami League's authoritarian governance, can both be understood as exercises of constituent power in this theoretical sense: moments in which the people, through extraordinary collective action, reasserted their ultimate authority over the constitutional order and demanded that it be reformed to better reflect their aspirations for democratic self-governance.

The challenge that Bangladesh faces in the wake of these constituent moments is the institutionalization of their insights: the conversion of the principles that have been affirmed through mass action into durable constitutional arrangements that can survive the return of ordinary politics and the inevitable pressures of partisan self-interest. The restoration of the 13th Amendment is one element of this institutionalization. But the broader task of building a political culture in which all significant political actors genuinely commit to democratic norms, to the acceptance of election results, to the rejection of corruption, and to the independence of constitutional institutions, is a task that no court judgment, however theoretically sophisticated, can accomplish on its own.

CHAPTER TWELVE: SYNTHESIZING THE LEGACY: FAKHRUDDIN AHMED IN HISTORICAL AND THEORETICAL PERSPECTIVE

12.1 The Man in the Moment: Historical Assessment

A just assessment of Fakhruddin Ahmed's legacy requires holding multiple and partially contradictory truths in mind simultaneously. He led a government that was constitutionally anomalous in its origins, that extended far beyond its constitutional mandate, that was backed by military power rather than democratic election, and that employed emergency powers in ways that violated fundamental rights. He also led a government that organized the most credible elections in Bangladesh's history, that implemented significant institutional reforms that addressed some of the country's most serious governance deficiencies, and that transferred power peacefully to an elected government in a transition that the international community recognized as genuinely democratic.

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The tension between these different dimensions of Fakhruddin Ahmed's legacy reflects the more fundamental tension between democratic procedure and democratic substance that runs through the entire theoretical literature on transitional governance. If democracy is understood primarily in procedural terms, as a set of rules and processes for selecting government through competitive elections, then the Fakhruddin government's violations of constitutional procedure are a fundamental problem that cannot be redeemed by the quality of its governance. If democracy is understood more substantively, as a system of governance that aims at the realization of certain values including political equality, governmental accountability, rule of law, and respect for fundamental rights, then the judgment becomes more complex: the caretaker government fell short of democratic ideals in some important respects while advancing them in others.

The most important single achievement of the Fakhruddin government was the creation of conditions for the 2008 elections. Those elections were not merely good elections in a narrow technical sense; they represented a genuine democratic moment, a moment in which millions of Bangladeshis were able to express their political preferences through a process that, more than any previous Bangladeshi election, actually counted and respected those preferences. The Awami League won those elections fair and square, and the overwhelming scale of their victory reflected a genuine popular mandate that should have been the foundation for a new chapter in Bangladesh's democratic development.

That this democratic moment was squandered, that the Awami League used the mandate from genuinely free elections to dismantle the safeguards that had made those elections possible, is a tragic irony that has less to do with Fakhruddin Ahmed than with the deeper pathologies of Bangladeshi political culture. But it also illustrates the limits of what any caretaker government, however competent and well-intentioned, can achieve. Sustainable democratic governance requires not just good institutions on paper and one good election, but a political culture in which the norms of democratic conduct are genuinely internalized by all significant political actors.

12.2 The Intellectual Contribution: Technocracy, Development, and Democratic Theory

Fakhruddin Ahmed's career represents a particular intellectual synthesis that deserves recognition as a contribution to development thinking, even if it did not take the form of academic publications. The synthesis of development economics, institutional theory, central banking experience, and high-level political management that his career embodies is a body of practical knowledge and wisdom about how to make states work better in conditions of institutional weakness and political instability.

His management of Bangladesh Bank demonstrated that significant institutional reform was possible even in a politically challenging environment if the reformer had the technical competence, the institutional position, and the international credibility to leverage external support for domestic change. His management of PKSF demonstrated that microfinance, when properly organized and supervised, could be an effective tool for extending financial access to the rural poor. And his tenure as Chief Adviser, for all its constitutional anomalies, demonstrated that a technically competent and internationally credible leadership could make significant improvements to governance institutions even within a constrained and contested political environment.

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The philosophical dimensions of this intellectual contribution connect to broader debates in contemporary development theory about the relationship between expertise and democracy, between technical competence and political legitimacy, between institutional engineering and political culture. Fakhruddin Ahmed's career embodies a particular answer to these questions: that technical expertise is a necessary but not sufficient condition for good governance, that institutions matter enormously but are ultimately shaped by political forces that technocratic governance cannot control, and that the sustainable improvement of governance requires both institutional reform and cultural change in ways that transcend what any single individual or government can accomplish.

12.3 The Unfinished Revolution: Bangladesh's Constitutional Future

The constitutional history of Bangladesh since independence is a story of aspiration repeatedly frustrated, of democratic promise repeatedly betrayed, of institutions built with care and then destroyed by the self-interested calculations of those who were supposed to be their guardians. The liberation war of 1971 was fought for freedom; the freedom it won was repeatedly compromised by the authoritarianism of those who claimed to speak in its name. The restoration of democracy in 1991 opened new possibilities; those possibilities were squandered by the corrupt and polarized politics of the 1990s and 2000s. The elections of 2008, the clearest expression of democratic will in Bangladesh's history, led to a government that dismantled democratic safeguards and descended into authoritarian governance. And the uprising of 2024, the most powerful expression of popular constitutional agency since independence, opened yet another new chapter whose ending remains to be written.

The Supreme Court judgments of 2024 to 2026 represent a new jurisprudential beginning, an attempt to provide Bangladesh's constitutional order with a more theoretically robust foundation that can withstand the centrifugal forces of partisan politics. The restoration of the 13th Amendment, grounded in a sophisticated analysis of constituent power and democratic legitimacy, is an important step. But it is only a step; the fundamental challenges of Bangladesh's democratic development, the political culture of winner-take-all competition, the weakness of party institutions below the level of their leaders, the fragility of judicial and regulatory independence, the pervasiveness of corruption, and the unresolved relationship between civilian and military power, remain as formidable as they have ever been.

Fakhruddin Ahmed's tenure as Chief Adviser was one episode in this long and unfinished struggle. It was an episode of extraordinary complexity, one that defies simple judgments of success or failure, virtue or vice, democracy or authoritarianism. It was an episode that raises, in particularly acute and vivid form, some of the deepest questions of political philosophy: about the sources of governmental legitimacy, about the proper balance between procedure and substance in democratic governance, about the relationship between technical expertise and democratic accountability, and about the conditions under which emergency departures from constitutional normality can be justified.

These questions do not have simple answers. But asking them carefully, analyzing the Bangladeshi experience with the full range of theoretical tools available from political philosophy, constitutional theory, development economics, and comparative politics, is the

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beginning of wisdom about how democratic governance can be built and sustained in conditions of institutional weakness and political polarization. That is the task that this textbook has undertaken, and it is a task that remains as urgent as ever for Bangladesh and for the many other countries that face similar challenges.

PREFATORY REMARKS ON THE STRUCTURE OF REMAINING PARTS

The four remaining parts of this textbook will build upon the foundations established in Part One, carrying the analysis forward along multiple dimensions. Part Two will examine Fakhruddin Ahmed's economic legacy in depth, including detailed analysis of his governance of Bangladesh Bank, his approach to macroeconomic management during the caretaker period, the PKSF and microfinance dimensions of his career, and the theoretical frameworks of development economics that shaped his understanding of Bangladesh's economic challenges.

Part Three will examine the legal and constitutional dimensions of the caretaker period in greater depth, including detailed analysis of the emergency powers framework, the anti-corruption legal architecture, the judicial reforms, and the evolution of constitutional jurisprudence in Bangladesh from the 13th Amendment through the 2026 Appellate Division judgment. This part will engage extensively with the Bengali language jurisprudence of Bangladesh's courts and with the specific provisions of the Bangladesh Constitution as they were interpreted and applied during the caretaker period.

Part Four will situate the Fakhruddin Ahmed period within the broader context of comparative constitutional development in South Asia, examining how Bangladesh's experience with the caretaker system compares with Pakistan's experience of transitional governance, with India's management of electoral administration through an independent commission, with Sri Lanka's constitutional travails, and with the broader literature on constitutional design in new democracies. This part will also examine the international dimensions of the Fakhruddin government in greater depth, including the role of the United States, the European Union, the United Nations, and the international financial institutions in shaping the environment within which the caretaker government operated.

Part Five will bring the analysis up to the present, examining the implications of the August 2024 uprising and the subsequent constitutional reforms for Bangladesh's democratic future. It will assess the legacy of the Fakhruddin period from the perspective of more than fifteen years of subsequent political development, examine the extent to which the institutional reforms of the caretaker period have proved durable, and consider what lessons the Fakhruddin experience offers for the constitutional reform process currently underway in Bangladesh. This final part will also engage with the broader theoretical questions about the conditions for sustainable democratic development that the Bangladeshi experience illuminates in such compelling and sometimes troubling ways.

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End of Part One: The Man, the Nation, and the Constitutional Moment

Part Two: The Economics of Crisis and Reform will follow in the next volume of this series.

Editorial Note on Sources: The research underlying this textbook draws on a wide range of primary and secondary sources including Bangladesh court judgments, government documents, diplomatic cables released under the WikiLeaks project, academic scholarship in political science, development economics, constitutional law, and political philosophy, journalistic accounts in both English and Bengali, and the analyses of international organizations including the International Crisis Group, the World Bank, and the International Monetary Fund. Particular attention has been given to developments in Bangladesh's constitutional jurisprudence in 2024, 2025, and 2026, which represent the latest and most theoretically sophisticated engagement with the questions raised by the Fakhruddin Ahmed period. All quotations from sources have been independently verified, and all characterizations of events and persons have been drawn from multiple sources where possible.

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PART TWO: THE ECONOMICS OF REFORM, FINANCE, AND DEVELOPMENT

Volume Two: The Economist in Power: From Central Banking to Statecraft

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FOREWORD TO PART TWO

Part One of this textbook established the intellectual, biographical, constitutional, and political foundations of the Fakhruddin Ahmed story. It examined his early life, his academic formation, the constitutional architecture of Bangladesh, the political crisis that brought him to power, and the philosophical and jurisprudential dimensions of the caretaker government that he led. It situated his career within the broader theoretical literature on democratic transitions, emergency governance, and constitutional legitimacy, and it traced the consequences of his period in office through the dramatic constitutional developments of 2024 to 2026.

Part Two now turns to what might be considered the other half of the Fakhruddin Ahmed story: the economic half. Fakhruddin Ahmed was, before anything else, an economist. His intellectual formation, his professional career, and his practical policy achievements were all fundamentally shaped by his engagement with economics as both a discipline and a craft. The reforms he implemented at Bangladesh Bank between 2001 and 2005, his leadership of the Palli Karma-Sahayak Foundation between 2005 and 2007, and his management of Bangladesh's macroeconomy during the caretaker period between 2007 and 2009 were all expressions of an economic intelligence that was simultaneously theoretical, empirical, and practical in its character.

Part Two examines all of these economic dimensions in depth. It begins with the theory of central banking and monetary policy, examining what a central bank does and why it matters for development, and then assesses Fakhruddin Ahmed's specific contributions as Bangladesh Bank Governor against this theoretical background. It examines the momentous transition from a fixed to a floating exchange rate regime under his leadership, analyzing the economic theory of exchange rate systems and the practical challenges of managing this transition in a developing-country context. It explores the financial sector reforms he initiated, the corporate governance innovations he introduced, and the bond market and securitization instruments he developed, situating these reforms within the broader literature on financial development and economic growth.

The textbook then turns to the microfinance dimension of Fakhruddin Ahmed's career, examining the PKSF as an institution, the theory and practice of microfinance in Bangladesh's development story, and the debates that have emerged about the extent to which microfinance actually reduces poverty and empowers the poor. It engages with the rich literature on Bangladesh's development model, which has attracted worldwide attention as a case study of how a poor country with difficult geographic and governance conditions can nonetheless achieve substantial reductions in poverty and significant improvements in human development indicators.

The final chapters of Part Two examine the macroeconomic management of the caretaker period itself, including the government's response to the food and fuel price crises of 2007 to 2008, the maintenance of fiscal discipline in conditions of political emergency, and the broader question of how economic governance can be sustained during periods of political transition. The discussion is brought fully up to date with the economic challenges confronting Bangladesh in 2025 and 2026, and with the question of what the legacy of the Fakhruddin economic reforms means for Bangladesh's current and future economic trajectory.

Throughout Part Two, as throughout this textbook as a whole, the economic analysis is situated within the broader frameworks of political economy, institutional economics, development philosophy, and jurisprudential theory that give the Fakhruddin Ahmed story its full intellectual depth.

CHAPTER THIRTEEN: THE THEORY AND PRACTICE OF CENTRAL BANKING IN DEVELOPING COUNTRIES

13.1 What Central Banks Do: Functions, Instruments, and Objectives

To appreciate Fakhruddin Ahmed's contribution as Governor of Bangladesh Bank, it is first necessary to understand what central banks do and why their functions are so critical to economic development. The central bank is, in the most fundamental sense, the bank of the state and the bank of the banking system. It occupies a unique constitutional position in the monetary and financial architecture of a modern economy, exercising powers that no other institution possesses and bearing responsibilities that are crucial to the health of the economy as a whole.

The core functions of a central bank can be grouped under several broad headings. First, and most fundamentally, the central bank is the monopoly issuer of currency, the institution that creates the legal tender that serves as the medium of exchange, store of value, and unit of account for the entire economy. The power to issue currency is simultaneously a technical function and a profound political responsibility, because the quantity of currency in circulation is a key determinant of the price level and therefore of the real purchasing power of every holder of money in the economy.

Second, the central bank is the custodian of the national monetary system, responsible for formulating and implementing monetary policy. Monetary policy, in its most basic form, consists

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of decisions about the supply of money and credit in the economy, typically implemented through the central bank's control over interest rates, reserve requirements, and open market operations. The objectives of monetary policy are generally stated in terms of price stability, meaning the maintenance of low and stable inflation, alongside support for broader macroeconomic goals including sustainable economic growth and high employment. The balance between these objectives, and the instruments available to achieve them, are matters of ongoing theoretical debate and practical challenge.

Third, the central bank serves as the lender of last resort to the banking system, the institution that stands ready to provide liquidity to solvent but temporarily illiquid banks in times of financial stress. This function, first systematically analyzed by Walter Bagehot in his classic work Lombard Street (1873), is crucial to the stability of the financial system because banks, by their nature, are vulnerable to runs, situations in which depositors simultaneously demand the withdrawal of their deposits in quantities that exceed the bank's available liquidity. Without a lender of last resort, individual bank runs can cascade into systemic banking crises with devastating consequences for the broader economy.

Fourth, the central bank serves as the regulator and supervisor of the banking and financial system, setting the rules within which banks and other financial institutions operate, monitoring compliance with these rules, and taking corrective action when institutions fall short of required standards. This regulatory function has grown enormously in importance over recent decades, as financial systems have become more complex and more interconnected, and as the potential for failures in one part of the financial system to spread rapidly to others has become more apparent.

Fifth, in many developing countries including Bangladesh, the central bank also serves as the manager of the country's foreign exchange reserves and the primary institution responsible for managing the exchange rate. This function connects domestic monetary policy to the international economy, because the exchange rate, the price of the domestic currency in terms of foreign currencies, affects the competitiveness of exports, the cost of imports, the attractiveness of the country to foreign investors, and the stability of the domestic price level.

The Bangladesh Bank, established in 1971 simultaneously with Bangladesh's independence, inherited the institutional framework and human capital of the State Bank of Pakistan's Dhaka branch. It was, from the beginning, an institution with a complex mandate: to manage monetary policy in a newly independent country with a devastated economy, to regulate a financial system that was largely nationalized and poorly capitalized, and to manage Bangladesh's foreign exchange position in conditions of extreme scarcity and dependence on international aid.

13.2 The History of Bangladesh Bank Before Fakhruddin Ahmed: Institutional Challenges

The history of Bangladesh Bank in the three decades before Fakhruddin Ahmed's appointment as Governor in 2001 is a history of institutional struggle against enormous structural obstacles. The bank was tasked with managing monetary policy in an economy that was, for much of this period, one of the poorest in the world, heavily dependent on agriculture, deeply vulnerable to external shocks including floods, droughts, and cyclones, and characterized by a financial system dominated by state-owned commercial banks (SOCBs) that were chronically undercapitalized,

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politically directed in their lending decisions, and burdened with enormous portfolios of non-performing loans.

The state-owned commercial banks, which controlled the vast majority of financial intermediation in Bangladesh, were essentially extensions of the government rather than genuine commercial institutions. They were used to channel subsidized credit to favored sectors and politically connected borrowers, without adequate assessment of credit risk or maintenance of prudent lending standards. The result was predictable: enormous accumulation of non-performing loans (NPLs) that eroded the banks' capital bases and compromised their capacity to function effectively as financial intermediaries.

The problem of non-performing loans in Bangladeshi banking is a structural issue that has persisted throughout the post-independence period and that continues to constrain the effectiveness of the financial system to the present day. As of late 2025, according to IMF assessments, Bangladesh continues to face significant financial sector vulnerabilities, with elevated levels of non-performing loans and undercapitalization in significant parts of the banking system. The roots of this problem lie in the political economy of credit allocation in a system where lending decisions are made on the basis of political connections rather than creditworthiness, and where borrowers with political protection feel little pressure to repay their loans.

The management of monetary policy in this environment was correspondingly difficult. With a financial system dominated by politically directed state banks and a weak bond market, the central bank's capacity to use market-based monetary policy instruments was severely limited. Bangladesh Bank operated primarily through direct controls on credit and interest rates rather than through the market mechanisms that are the standard instruments of monetary policy in developed financial systems. This approach was inefficient and distorting, creating significant misallocations of credit and impeding the development of a more sophisticated financial system.

The exchange rate was managed under a regime of administered exchange rate adjustment, in which the central bank periodically adjusted the value of the taka against the US dollar through discrete devaluations rather than allowing the exchange rate to be determined by market forces. This approach created its own distortions, incentivizing speculative behavior and hampering the development of a genuine foreign exchange market.

13.3 Fakhruddin Ahmed as Bangladesh Bank Governor: The Reform Agenda

When Fakhruddin Ahmed took office as Governor of Bangladesh Bank in November 2001, he came equipped with an unusually broad and deep preparation for the role. His PhD in economics from Princeton, his more than twenty years of experience at the World Bank working on macroeconomic and financial sector issues across multiple regions, and his specific experience in Bangladesh's Ministry of Finance managing external financial relationships all gave him a comprehensive understanding of the challenges he faced and the potential approaches available to address them.

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He arrived at a particularly important moment. Bangladesh's economy had come under increasing strain in the final years of the previous century, as expansionary fiscal and monetary policies had led to a buildup of macroeconomic imbalances that was reflected in exchange market pressures and a worrying decline in international reserves. By mid-2001, Bangladesh's gross international reserves had fallen to less than one month of imports, a critically low level that left the country highly vulnerable to external shocks. At the same time, the looming expiration in 2005 of the Multi-Fibre Arrangement (MFA), which had provided Bangladesh's ready-made garment (RMG) sector with preferential quota access to the key export markets of the United States and Europe, represented a major structural challenge to the country's primary export industry and its primary source of export earnings.

The reform agenda that Fakhruddin Ahmed designed and implemented during his tenure as Bangladesh Bank Governor addressed these challenges on multiple fronts simultaneously. The agenda was coherent and comprehensive, reflecting a sophisticated understanding of how different elements of the financial and monetary system interact with each other and with the broader macroeconomy.

The most visible and internationally significant element of the reform agenda was the transition from a fixed to a floating exchange rate regime, which was implemented in May 2003. This was a major policy shift that had been in preparation for more than a year, with technical assistance from the IMF and careful groundwork to ensure that the necessary institutional prerequisites for a functioning foreign exchange market were in place before the transition was made. The transition was accomplished with minimal volatility and disruption, a significant technical achievement in a country where the foreign exchange market was shallow and underdeveloped.

13.4 The Exchange Rate Reform: Theory and Practice

The exchange rate is one of the most politically sensitive and theoretically complex instruments in macroeconomic management. The choice of exchange rate regime, between fixed rates, managed floats, and free floats, involves fundamental trade-offs that connect to deep issues in international monetary economics. Understanding the theory of exchange rate regimes is essential to appreciating what Fakhruddin Ahmed accomplished in transitioning Bangladesh from a managed peg to a floating rate.

The classical argument for fixed exchange rates, developed by economists in the Bretton Woods era and still influential today, emphasizes the role of exchange rate stability in facilitating international trade and investment. When exchange rates are fixed and credible, traders and investors do not need to bear the cost and uncertainty of exchange rate risk, which reduces transaction costs and encourages economic integration across national borders. Fixed rates also provide a nominal anchor for monetary policy, giving the central bank a clear and transparent target that can help to anchor inflation expectations.

But fixed exchange rates also have serious disadvantages, particularly for developing countries. A fixed rate requires the central bank to stand ready to buy and sell its currency at the fixed price, which requires holding large foreign exchange reserves and which can expose the country to speculative attacks if market participants believe the fixed rate is unsustainable. A fixed rate

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also prevents the exchange rate from playing its natural adjustment role: when a country's exports become less competitive because of rising domestic costs or declining external demand, a depreciating exchange rate would normally help to restore competitiveness by making the country's goods cheaper in foreign markets. Under a fixed rate, this adjustment mechanism is unavailable, requiring instead the more painful process of domestic price and wage adjustment.

The case for floating exchange rates, developed by Milton Friedman in his influential 1953 essay on the methodology of positive economics and subsequently elaborated by many others, argues that flexible rates allow the exchange rate to absorb external shocks and to facilitate macroeconomic adjustment in ways that fixed rates do not. When the terms of trade deteriorate, when export markets weaken, or when capital flows shift, a floating exchange rate can absorb much of the adjustment in the form of currency depreciation, spreading the economic costs more broadly and avoiding the concentration of adjustment pressure on wages and employment that fixed rate adjustment requires.

The specific case for floating rates in Bangladesh in the early 2000s was particularly strong. Bangladesh was facing significant external pressures: the pressure on international reserves that reflected the unsustainability of the existing exchange rate level, and the prospective challenge of the MFA expiry that would require the RMG sector to compete more vigorously on price and quality rather than relying on preferential market access. A floating exchange rate would allow the taka to depreciate to a level consistent with Bangladesh's external balance, and would create the flexibility for ongoing exchange rate adjustment in response to changing competitive conditions.

The transition to a floating rate was not, however, simply a matter of announcing that the rate would henceforth be determined by market forces. A functioning foreign exchange market requires institutional infrastructure that Bangladesh was in the process of building: a network of authorized dealer banks capable of quoting and transacting at market-determined rates, a regulatory framework for forward foreign exchange transactions that allows exporters and importers to manage their exchange rate exposures, and a Bangladesh Bank that is equipped and willing to intervene in the market to prevent excessive volatility without trying to peg the rate at any particular level.

Fakhruddin Ahmed's management of this transition was, by the accounts of international financial institutions that monitored it, technically accomplished. The taka depreciated gradually from its previously supported level without a disorderly collapse, foreign exchange reserves stabilized and then began to recover, and the export sector adapted to the new exchange rate environment. The IMF's assessment of the transition, published in a case study of countries that had moved from fixed to floating regimes, cited Bangladesh as an example of a successful managed transition.

The academic literature on this transition has been more nuanced. Research published by Bangladeshi and international economists has noted that the shift to a nominally floating regime masked the continuation of significant Bangladesh Bank intervention in the foreign exchange market, creating a de facto managed float that was not always acknowledged in official communications. This gap between declared policy and actual practice raised questions about the

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credibility and transparency of the exchange rate regime, which are important for the effectiveness of the exchange rate as a macroeconomic policy instrument.

13.5 Financial Sector Reform: Corporate Governance and Banking Regulation

Alongside the exchange rate reform, Fakhruddin Ahmed pursued a comprehensive agenda of financial sector reform that addressed the deep structural weaknesses of Bangladesh's banking system. The reforms he introduced covered corporate governance, banking regulation, non-performing loan management, capital adequacy requirements, and the development of new financial market instruments.

The corporate governance reforms were perhaps the most conceptually innovative element of the agenda. Corporate governance, the system of rules, practices, and processes by which organizations are directed and controlled, had been almost entirely absent from the culture of Bangladeshi banking before Fakhruddin Ahmed's tenure. The state-owned banks were governed by boards that were appointed by the government and that served political rather than commercial or prudential purposes. The private commercial banks were often dominated by their major shareholders, who used their control of the board to direct lending to their own businesses rather than to creditworthy borrowers on arm's-length commercial terms.

Fakhruddin Ahmed introduced a framework of corporate governance requirements that, for the first time in Bangladesh, imposed genuine standards of board composition, independence, and fiduciary responsibility on commercial banks. The new requirements mandated the appointment of independent directors with relevant financial expertise, the establishment of audit committees with independent oversight of financial reporting, and the separation of the roles of board chairman and chief executive to prevent the dangerous concentration of power in a single person.

These reforms connected to a broader global movement toward improved corporate governance that had accelerated following the Asian financial crisis of 1997 to 1998, which had exposed the devastating consequences of weak governance and inadequate prudential standards in the financial systems of East Asian economies. The OECD Principles of Corporate Governance, first published in 1999 and subsequently revised, provided an international benchmark against which the corporate governance frameworks of developing countries could be assessed.

The theoretical basis for corporate governance reform connects to the foundational concepts of agency theory in corporate finance, associated with the work of Jensen and Meckling (1976) and elaborated by a large subsequent literature. Agency theory analyzes the relationship between principals (shareholders or owners) and agents (managers or executives), and the governance mechanisms that can be used to align the interests of agents with those of principals. In the banking context, the agency problem is compounded by the additional dimension of depositor and creditor interests, which may diverge from shareholder interests in ways that create systemic risks. The regulatory governance framework must therefore address not only the internal governance of banks but also the external accountability of banks to their depositors, creditors, and the broader public.

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In Bangladesh's specific context, the agency problem was compounded by the problem of political capture: banks were used as instruments of political patronage, with lending decisions serving political rather than commercial purposes. The corporate governance reforms were designed to create a layer of institutional protection against this political capture by insisting on the formal independence of boards and the application of genuine fiduciary standards.

13.6 The Bond Market and Securitization: Building Financial Market Infrastructure

One of the less celebrated but intellectually important elements of Fakhruddin Ahmed's reforms at Bangladesh Bank was the development of new financial market instruments and the beginning of a domestic bond market. These innovations connected to fundamental questions in financial economics about the role of financial market depth and diversity in supporting economic development.

The relationship between financial development and economic growth has been one of the most intensively studied topics in development economics over the past three decades. The theoretical argument, associated with the work of Ronald McKinnon (Money and Capital in Economic Development, 1973) and Edward Shaw (Financial Deepening in Economic Development, 1973), holds that financial repression, the suppression of financial markets and imposition of below-market interest rates, leads to inefficient allocation of savings and investment and ultimately impedes economic growth. Financial liberalization, by allowing interest rates to be determined by market forces and by creating the conditions for more sophisticated financial intermediation, should therefore promote growth by improving the efficiency of capital allocation.

Subsequent empirical research, including influential studies by King and Levine (1993) and the work of Levine and Zervos (1998), provided substantial evidence that financial development is indeed positively associated with economic growth. Countries with deeper and more developed financial systems tend to grow faster and to achieve better outcomes on various measures of economic performance, controlling for other determinants of growth. This relationship reflects the fundamental economic function of financial systems: they mobilize savings, allocate capital to productive uses, manage risk, process information, and facilitate transactions, all functions that contribute directly to economic efficiency and growth.

The development of a domestic bond market in Bangladesh, which Fakhruddin Ahmed actively promoted during his tenure as Governor, was a crucial element of building the financial market infrastructure necessary for more sophisticated financial intermediation. A functioning bond market provides the government with an alternative to central bank financing for its deficit, reducing the monetary consequences of fiscal deficits. It provides the private sector with access to longer-term capital at market-determined rates. And it creates a yield curve, the relationship between bond yields and maturities, that serves as a benchmark for the pricing of other financial instruments and that is a crucial piece of information for investors, lenders, and policymakers.

Bangladesh's bond market was at a very early stage of development at the beginning of Fakhruddin Ahmed's tenure. Government securities were issued primarily to meet regulatory requirements (banks were required to hold certain amounts of government securities as liquid assets), and secondary market trading was minimal. The development of active secondary

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markets for government securities, with transparent price discovery and genuine liquidity, was one of Ahmed's goals. He worked with international technical advisors, including from the World Bank, to design and implement a system of primary dealers who would be obligated to make markets in government securities, creating the liquidity that secondary market development requires.

The introduction of securitization as a financial instrument in Bangladesh was another innovative element of the reform agenda. Securitization, the process of bundling loans or other financial assets into pools and issuing securities backed by these pools, is a technique that can allow financial institutions to transfer credit risk off their balance sheets, to raise liquidity against relatively illiquid assets, and to access capital from investors who would not directly purchase individual loans. In developed financial markets, securitization has been used extensively in mortgage lending, auto lending, student lending, and many other credit markets.

In Bangladesh, the introduction of securitization was more limited in scope but nonetheless significant as a conceptual and institutional development. The primary application was in the mortgage market, where securitization offered the potential to allow banks to convert their long-term mortgage loans into liquid securities, freeing up capital for additional lending and potentially reducing the cost of mortgage finance for borrowers.

13.7 The Political Economy of Central Bank Independence

One of the most fundamental institutional questions in monetary economics is the question of central bank independence: how much autonomy should the central bank have from the elected government in the conduct of monetary policy? This question connects to deep issues in democratic theory and constitutional design, as well as to important empirical questions about the relationship between central bank independence and macroeconomic performance.

The theoretical case for central bank independence rests on the concept of "dynamic inconsistency" in monetary policy, first formally analyzed by Kydland and Prescott (1977) and Barro and Gordon (1983). The argument, in its simplest form, runs as follows. If monetary policy is controlled by elected governments, there will be a systematic tendency toward inflationary bias. This is because governments facing elections have incentives to stimulate economic activity in the short run through expansionary monetary policy, creating temporary boosts to employment and growth that may help them win elections, even though the long-run consequences include higher inflation without any sustained improvement in real economic performance. Rational private actors, anticipating this inflationary bias, will adjust their expectations accordingly, requiring governments to generate ever-higher levels of monetary stimulus to achieve any given boost to output. The equilibrium is one of higher inflation without any lasting improvement in real economic performance.

The solution, in the Kydland-Prescott analysis, is to delegate monetary policy to an independent central bank with a mandate to maintain price stability, insulated from the short-term political pressures that create the inflationary bias. A credible independent central bank can achieve low inflation at lower cost in terms of output and employment sacrifice, because private actors trust that the bank will not succumb to the inflationary temptation.

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The empirical evidence on this proposition is broadly supportive: cross-country studies have consistently found that countries with more independent central banks tend to have lower and more stable inflation, without significant costs in terms of lower economic growth or higher unemployment. This finding has been one of the most influential in applied macroeconomics, driving a worldwide trend toward greater central bank independence in the 1990s and 2000s.

For Fakhruddin Ahmed at Bangladesh Bank, the question of central bank independence was both a theoretical concern and a practical daily challenge. Bangladesh Bank's formal independence was limited by its legal framework; the Bangladesh Bank Order of 1972 gave the government significant powers over the bank's operations and governance. In practice, the bank's independence was further constrained by the political culture of Bangladesh, in which the government expected the central bank to accommodate its fiscal requirements through monetization of the deficit and to direct credit to politically favored borrowers.

Ahmed's approach to navigating this challenging environment was characteristically pragmatic and technically grounded. He used the leverage of international financial institutions and external pressures, including Bangladesh's engagement with IMF programs that required specific monetary policy commitments, to create institutional space for more independent monetary management. He built up the bank's technical capacity and its reputation for analytical rigor, creating institutional credibility that was more difficult for political pressure to override. And he consistently framed monetary policy decisions in technical terms that emphasized the macroeconomic consequences of monetary accommodation, making it more difficult for government officials to justify requests for inflationary financing without confronting the economic costs explicitly.

This approach reflects a broader strategy that might be characterized as "technical politics": the use of technical expertise and international institutional frameworks to advance reform agendas in politically constrained environments. It is a strategy with both significant strengths and important limitations. Its strength is that it can produce genuine policy improvements in the face of political resistance by creating a language and analytical framework that makes it difficult to justify the status quo. Its limitation is that it is ultimately dependent on the political tolerance of those in power, who can always override technical arguments if they are sufficiently motivated to do so.

CHAPTER FOURTEEN: THE MICROFINANCE DIMENSION: PKSF, POVERTY, AND THE THEORY OF FINANCIAL INCLUSION

14.1 The Global Microfinance Revolution and Bangladesh's Role

Between his tenure as Bangladesh Bank Governor and his appointment as Chief Adviser, Fakhruddin Ahmed served from June 2005 to January 2007 as Managing Director of the Palli Karma-Sahayak Foundation, known universally by its acronym PKSF (Bengali for "Rural Employment Support Foundation"). This role placed him at the center of one of the most

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remarkable and internationally celebrated development innovations of the late twentieth century: the Bangladeshi microfinance system.

Bangladesh is not merely a participant in the global microfinance movement; it is, in a very real sense, the place where modern microfinance was invented. The Grameen Bank, founded by Muhammad Yunus in the late 1970s and early 1980s as a project of Chittagong University's rural economics program, pioneered the model of group lending to poor borrowers without collateral that became the template for microfinance programs around the world. BRAC, founded by Fazle Hasan Abed in 1972 in the immediate aftermath of the Liberation War, developed its own model of microfinance integrated with health, education, and livelihood development programs that proved enormously effective and was replicated across Asia and Africa.

These pioneering Bangladeshi institutions demonstrated that poor people, including women from the most marginalized social groups, could be reliable borrowers if credit was provided in ways that were appropriate to their circumstances: in small amounts, with frequent repayment schedules that matched the cash flow patterns of small-scale enterprise and agricultural activity, with social accountability mechanisms like the group lending model that substituted for the lack of physical collateral, and with the support of savings facilities and other financial services that helped borrowers manage their financial lives.

The global impact of these Bangladeshi innovations was enormous. By the early 2000s, microfinance programs modeled on Bangladeshi templates were operating in dozens of countries across Asia, Africa, and Latin America. The United Nations declared 2005 the International Year of Microcredit, and in 2006 Muhammad Yunus and the Grameen Bank jointly received the Nobel Peace Prize, an award that brought global attention to microfinance as a development tool and to Bangladesh as the birthplace of the movement.

14.2 PKSF: An Institutional Innovation in Development Finance

The Palli Karma-Sahayak Foundation represents a specific institutional innovation in the architecture of Bangladesh's microfinance system: the apex fund. The concept of an apex fund addresses a fundamental challenge in scaling up microfinance: while individual microfinance institutions (MFIs) may be effective at delivering financial services to poor clients in their specific geographic areas, they are often too small and too under-resourced to access capital markets or to achieve the economies of scale necessary for financial sustainability.

An apex fund addresses this challenge by providing a wholesale funding mechanism: rather than lending directly to poor borrowers, the apex fund lends to MFIs, which then on-lend to their clients. The apex fund can access capital from the government, international donors, and capital markets at lower cost than individual MFIs because of its scale, its institutional credibility, and its risk diversification across a large portfolio of MFI partners. It then provides these funds to MFIs at subsidized or market rates, depending on the terms of the funding it has received, enabling the MFIs to expand their operations and reach more poor clients.

PKSF was established by the Government of Bangladesh in 1990, reflecting the government's recognition that the spontaneous growth of microfinance institutions since the 1970s had created

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a sector of enormous social importance but uneven quality and uncertain financial sustainability. The foundation was designed to provide both funding and capacity-building support to partner MFIs, helping them to develop more rigorous management systems, better financial controls, and stronger institutional foundations.

By the time Fakhruddin Ahmed became its Managing Director in June 2005, PKSF had grown into the largest apex microfinance fund in the world, with partnerships with more than 200 microfinance organizations and a loan portfolio that made it a critical piece of the infrastructure supporting Bangladesh's remarkable microfinance sector. The foundation's dual role, as both a financial intermediary and a capacity-building institution, reflected a sophisticated understanding of what made microfinance effective: not just the provision of capital, but the development of the institutional capacity to use capital well.

Fakhruddin Ahmed's brief tenure at PKSF was marked by his characteristic emphasis on institutional rigor, financial discipline, and systematic analysis of impact. He brought to the role the same combination of economic analysis and practical management experience that had characterized his work at Bangladesh Bank, applying it now to the specific challenges of the microfinance sector.

14.3 The Theory of Microfinance: Credit Market Failures and the Poor

The theoretical foundation for microfinance as a development intervention rests on an analysis of why poor people lack access to formal credit markets, and how the institutional innovations of microfinance overcome the market failures that create this exclusion. This theoretical analysis connects to fundamental questions in the economics of information and contract theory that have been at the frontier of economic research since the 1970s.

The standard theoretical explanation for credit market exclusion of the poor centers on three related problems: adverse selection, moral hazard, and the collateral problem. Adverse selection refers to the tendency of credit markets to be disproportionately attractive to high-risk borrowers: potential borrowers who know they are unlikely to repay their loans have stronger incentives to seek credit than those who are genuinely creditworthy. Lenders who cannot distinguish high-risk from low-risk borrowers may respond by charging higher interest rates that drive away the lowest-risk borrowers, creating a self-reinforcing cycle of adverse selection.

Moral hazard refers to the tendency of borrowers to take greater risks once they have received credit, knowing that if things go badly they can default on the loan and shift the losses to the lender. Lenders who cannot monitor borrowers' behavior after loan disbursement are exposed to this risk, and respond by requiring collateral as a means of aligning the borrower's incentives with those of the lender: if the borrower knows that failure to repay will result in the loss of collateral, she has a stronger incentive to use the loan productively and to repay.

The collateral problem for poor borrowers is obvious: they typically have no assets that can serve as collateral for formal sector loans. Without collateral, lenders in formal credit markets have no mechanism for managing moral hazard, and they respond by simply refusing to lend to borrowers who cannot provide adequate collateral.

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The Grameen Bank's group lending model, the Bangladeshi innovation that became the template for microfinance worldwide, addressed these problems through a series of institutional mechanisms. By lending to groups of five women who jointly guaranteed each other's loans, the model created a social mechanism for screening: group members would only vouch for individuals they believed to be reliable borrowers, addressing the adverse selection problem. Joint liability also created monitoring incentives: group members had strong incentives to monitor each other's use of loans and to apply social pressure on any member who appeared to be at risk of default. And the public nature of group meetings and loan repayment rituals created reputational incentives for repayment that substituted for the material incentives provided by collateral.

The economic theory of these mechanisms was formalized by a number of economists in the 1990s and 2000s, including Stiglitz (1990), Besley and Coate (1995), and Ghatak (1999), who showed rigorously how group lending could overcome the credit market failures that excluded poor borrowers from formal credit markets. This theoretical work provided a rigorous analytical foundation for the empirical success that practitioners had already observed in the field.

14.4 The Debate About Microfinance Effectiveness: Evidence and Controversy

The dramatic growth of microfinance in the 1990s and 2000s was accompanied by an equally dramatic expansion in the research on its effectiveness, and the results of this research have been considerably more nuanced and contested than the celebratory rhetoric surrounding the sector might suggest. The debate about microfinance effectiveness is one of the most important methodological and substantive debates in development economics, and it bears directly on the assessment of the PKSF's work and of Fakhruddin Ahmed's role in leading it.

The early impact assessments of microfinance, including influential studies by Pitt and Khandker (1998) using World Bank survey data from Bangladesh, found positive and significant effects of microfinance on household consumption, asset accumulation, and children's schooling, with particularly strong effects for female borrowers. These findings were enormously influential in the development policy world, providing empirical support for the expansion of microfinance and for the targeting of women as primary beneficiaries.

But subsequent research has challenged these findings on both methodological and substantive grounds. The Pitt-Khandker results were subjected to detailed methodological critique by Morduch (1998) and others, who argued that the identification strategy used to distinguish the effects of microfinance from other determinants of household welfare was flawed. The core methodological challenge is that microfinance programs are not randomly assigned: the characteristics that lead households to participate in microfinance programs, including geographical location, household composition, and entrepreneurial orientation, may also be directly related to welfare outcomes, making it difficult to isolate the causal effect of microfinance participation.

The most definitive evidence on microfinance effectiveness has come from randomized controlled trials (RCTs), the gold standard of impact evaluation methodology in development economics. A series of RCTs conducted in multiple countries in the 2000s and 2010s, including

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a landmark study in India by Banerjee and collaborators (2015) and a study in Bosnia by Augsberg and collaborators (2015), produced results that were considerably more modest than the earlier observational studies had suggested. These studies generally found positive but small and statistically insignificant average effects of microfinance access on consumption and income, with evidence of some positive effects on business investment and formation. They did not find the transformative poverty-reducing effects that earlier studies had claimed, and they did not find consistent positive effects on women's empowerment.

A meta-analysis of the RCT evidence by Banerjee, Karlan, and Zinman (2015) summarized the findings of six simultaneous RCTs as showing that access to microcredit "leads to modest but not transformative gains." The authors concluded that microfinance is neither the panacea that its proponents claimed nor the harmful trap that its critics alleged; it is a financial service that meets a real need for some borrowers and that has modest positive effects on average, with considerable heterogeneity across borrowers and contexts.

For Bangladesh specifically, the academic debate about microfinance effectiveness connects to the remarkable empirical achievement of the country's poverty reduction over the past three decades. Bangladesh reduced its poverty rate, measured at the national poverty line, from more than 50 percent in 1990 to below 20 percent by 2019, while also achieving dramatic improvements in health and education outcomes that have made it an outlier among countries at similar income levels. Whether microfinance deserves significant credit for this achievement, or whether other factors including the growth of the RMG sector, remittances from overseas workers, improvements in agricultural productivity, and public health interventions were more important, is a question that continues to be actively debated.

The most balanced assessment of the available evidence suggests that microfinance was one of multiple factors contributing to Bangladesh's development success, and that its contribution was important but not uniquely determinative. The microfinance sector provided financial services to tens of millions of poor households, including savings facilities, insurance products, and credit, that improved their capacity to manage risk, smooth consumption, and make productive investments. These services had real value, even if their average effect on household income was more modest than early claims suggested. And the social dimensions of the Grameen-model lending groups, the weekly meetings, the group solidarity, the emphasis on women's leadership, may have contributed to broader social changes including improvements in women's status and agency that the income-focused impact evaluations did not fully capture.

14.5 Microfinance and Women's Empowerment: The Feminist Political Economy Dimension

The targeting of women as the primary beneficiaries of microfinance programs in Bangladesh and globally reflects a specific theoretical claim: that women are not only more reliable borrowers than men (as the repayment performance of microfinance programs has consistently demonstrated) but also that providing women with independent access to credit and financial resources contributes to their empowerment within the household and society more broadly.

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This claim connects microfinance to the broader project of feminist political economy, which examines how economic structures and policies affect the distribution of power and resources between men and women. The feminist political economy tradition, developed by scholars including Amartya Sen (whose "capabilities approach" to development places particular emphasis on women's agency and functioning), Bina Agarwal, and Naila Kabeer, argues that gender inequality is not merely a social injustice but an economic inefficiency that impedes development by preventing women from fully contributing their capabilities to economic activity.

Amartya Sen's concept of the "missing women," the demographic deficit in the populations of countries where son preference leads to differential treatment of girls in food allocation, healthcare, and education, pointed to the deadly consequences of gender inequality in South Asia. Bangladesh, despite its Muslim-majority population and the conservative social norms that the colonial and post-colonial periods had reinforced, achieved a remarkable improvement in gender indicators from the 1990s onward, including near-parity in primary and secondary school enrollment and significant reductions in maternal mortality. The microfinance sector, with its targeting of women and its mobilization of women into public economic roles through group meetings and business activities, is widely credited with contributing to these improvements.

But the feminist critique of microfinance is also important and has generated a rich literature. Critics argue that microfinance programs, by providing women with credit that is often then controlled by their husbands, may reinforce rather than challenge patriarchal household structures. The credit is received in the woman's name, with the woman bearing the responsibility for repayment, but the productive investment decisions may be made by the husband, who captures the economic benefits while the wife bears the social risk of default. This "credit without control" pattern, documented in fieldwork studies by Naila Kabeer and others, suggests that the empowerment benefits of microfinance may be less universal than proponents claim.

A more nuanced picture emerges from ethnographic and qualitative research that follows women borrowers over time and examines how their relationships with their families, communities, and economic environments change. This research suggests that microfinance participation can be a vehicle for women's empowerment in some contexts and for some women, particularly those who are already positioned to take advantage of access to credit, while being less transformative for the most marginalized women who may lack the social capital, the market access, and the productive opportunities necessary to translate credit into genuine economic and social advancement.

These debates about microfinance effectiveness and women's empowerment are directly relevant to Fakhruddin Ahmed's tenure at PKSF, because they raise fundamental questions about the developmental model that PKSF was implementing. Was the apex fund effectively promoting genuine poverty reduction and women's empowerment, or was it primarily serving the financial sustainability and institutional growth of its partner MFIs at the potential expense of the interests of the poorest and most vulnerable borrowers?

14.6 The Ultra-Poor and the Limits of Microfinance

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One of the most important insights to emerge from decades of microfinance practice and evaluation in Bangladesh is the recognition that microfinance, by itself, does not reach or help the very poorest households: what development practitioners call the "ultra-poor." The ultra-poor, defined variously but typically as those living on less than a dollar a day or those who are chronically food insecure, face constraints so severe that access to credit, even at favorable terms, does not enable them to take productive advantage of it. They lack the basic physical health, nutritional security, productive assets, and social connections necessary to engage in the small-scale enterprise activities that microfinance is designed to support.

The recognition of this limitation led to the development of "graduation programs," of which BRAC's Targeting the Ultra Poor (TUP) program is the most celebrated example. These programs provide a "package" of support to ultra-poor households that includes not only credit but also asset transfers (typically productive assets like livestock or seeds), skills training, regular visits from program staff, and consumption support in the form of food or cash transfers, designed to "graduate" the household from ultra-poverty to a level at which mainstream microfinance becomes viable.

The impact evaluation evidence on graduation programs has been considerably more positive than the evidence on mainstream microfinance. A series of RCTs evaluating similar programs in multiple countries, coordinated by the Abdul Latif Jameel Poverty Action Lab (J-PAL) and published in Science in 2015, found significant and sustained positive effects on consumption, assets, income, food security, and mental health, with effects persisting long after the program support had ended.

The graduation approach represents a more sophisticated understanding of poverty and its causes than the standard microfinance model. It recognizes that poverty is not simply the absence of credit but a multidimensional condition involving material deprivation, social marginalization, psychological distress, and vulnerability to shocks. Addressing poverty effectively requires interventions that address multiple dimensions simultaneously, not just providing access to financial services.

PKSF, under various leaderships including Fakhruddin Ahmed's brief tenure, was involved in developing and supporting these more comprehensive approaches to reaching the ultra-poor. The foundation's Programmed Initiatives for Monga Eradication (PRIME) program, designed to address the seasonal food insecurity in the northern districts of Bangladesh known as monga (the hungry season before the main harvest), represented an attempt to use the microfinance infrastructure for a more comprehensive poverty-fighting agenda.

14.7 The Princeton Legacy Revisited: Development Economics and Poverty Theory

Fakhruddin Ahmed's engagement with microfinance and PKSF brought him back to some of the foundational questions of development economics that had shaped his intellectual formation at Princeton and Williams. The question of how to achieve genuine reductions in poverty, rather than simply increasing aggregate economic output, had been at the center of development economics since at least the 1970s.

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The development economics tradition that Fakhruddin Ahmed absorbed in the early 1970s was in the midst of a fundamental rethinking of the relationship between growth and poverty reduction. The earlier assumption, associated with the Lewis model of development and the emphasis on GDP growth in the 1950s and 1960s, had been that economic growth would automatically trickle down to the poor. By the early 1970s, this assumption was being challenged by the evidence from newly industrializing countries that rapid economic growth could be accompanied by increasing inequality and by the persistence or even worsening of absolute poverty for large portions of the population.

This challenge generated a new emphasis on "redistribution with growth," developed by Hollis Chenery, Montek Ahluwalia, and their World Bank colleagues in the early 1970s, and later on basic needs approaches that emphasized direct provision of essential services to the poor rather than relying on growth to eventually generate adequate incomes. These approaches represented an important intellectual shift in development economics that directly influenced the World Bank's strategy under Robert McNamara and that shaped the intellectual environment in which Fakhruddin Ahmed built his career.

The current state of development economics thinking about poverty and development, enriched by decades of empirical research and theoretical innovation, is more sophisticated and empirically grounded than the approaches available in the 1970s. The work of Abhijit Banerjee and Esther Duflo, recognized by the Nobel Prize in Economics in 2019, has been particularly influential in establishing rigorous impact evaluation methods, including the RCT methodology, as the gold standard for assessing the effectiveness of development interventions. Their book Poor Economics (2011) synthesizes a large body of research on the economic lives of poor people in developing countries and challenges many of the assumptions that have guided both top-down development planning and bottom-up microfinance approaches.

The capabilities approach developed by Amartya Sen, whose work on development as freedom has been profoundly influential across economics, philosophy, and policy, provides another important theoretical framework for assessing development interventions. Sen argues that the objective of development should be understood not as maximizing income or consumption but as expanding the "capabilities" of individuals: their real opportunities to lead lives they have reason to value. This framework shifts attention from material outcomes to the freedoms and opportunities that allow people to live well, including access to education, health, political participation, and the social bases of self-respect.

These contemporary theoretical frameworks are directly relevant to assessing the developmental legacy of the Fakhruddin Ahmed period, including both his work at PKSF and the broader economic policies of the caretaker government. Did the reforms of the caretaker period expand the capabilities of ordinary Bangladeshis? Did the anti-corruption campaign and institutional reforms create conditions in which poor people had more genuine access to justice, public services, and economic opportunity? Did the macroeconomic management of the period contribute to or detract from the sustained poverty reduction that Bangladesh achieved over the subsequent decade?

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CHAPTER FIFTEEN: MACROECONOMIC MANAGEMENT DURING THE CARETAKER PERIOD, 2007-2009

15.1 The Economic Inheritance: Strengths and Vulnerabilities

When Fakhruddin Ahmed assumed office as Chief Adviser in January 2007, he inherited an economy that was in better shape than Bangladesh's reputation might have suggested, but that also faced significant vulnerabilities and near-term challenges. Understanding both the strengths and the weaknesses of the economic inheritance is essential to assessing the economic management of the caretaker period.

The strengths were real and significant. Bangladesh's economy had achieved sustained growth of around 6 percent per year through much of the preceding decade, a rate that, while not spectacular by East Asian standards, was sufficient to generate significant improvements in material living standards for a large portion of the population. The primary engine of this growth was the ready-made garment sector, which had grown from near-zero to a multi-billion-dollar export industry over two decades and which by 2007 employed several million workers, the great majority of them women from rural areas who had migrated to the cities seeking economic opportunity.

The ready-made garment sector's survival of the expiry of the Multi-Fibre Arrangement in 2005 was itself a significant economic achievement. Many analysts had predicted that Bangladesh's RMG exports would collapse when preferential quota access was eliminated and Bangladeshi producers had to compete on equal terms with China, India, and other major garment exporters. While there was indeed a period of adjustment, the Bangladeshi industry proved more resilient than expected, driven by several competitive advantages including lower labor costs than its principal competitors, established supply chains and buyer relationships, a large and adaptable workforce, and a degree of cost efficiency in production that allowed it to compete on price.

The remittance sector was another important economic strength. Bangladeshis working overseas, primarily in the Gulf states, had established a significant remittance flow that by the mid-2000s was the second-largest source of foreign exchange after RMG exports. Remittances provided direct income support to millions of Bangladeshi households and represented a significant source of domestic consumption growth. They were also relatively stable compared to export earnings, providing a cushion against external shocks.

The vulnerabilities were also significant. Bangladesh's fiscal system was chronically weak, with tax revenues well below those of comparable countries, a large public sector payroll that consumed a disproportionate share of government resources, and capital spending on infrastructure that was inadequate to the economy's needs. The financial sector remained fragile, with the state-owned commercial banks carrying large portfolios of non-performing loans and with the private sector banks' quality of governance highly variable.

The energy sector was emerging as a growing constraint on economic growth. Bangladesh's industrial development was increasingly hampered by inadequate electricity generation capacity and unreliable power supply, which imposed significant costs on businesses and limited their

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productivity and competitiveness. The underlying problem was a failure of investment in power generation infrastructure, compounded by the financial difficulties of the power sector utilities and by the governance problems of the energy sector more broadly.

15.2 The Food and Fuel Price Crisis: Managing External Shocks

The most immediate and severe economic challenge that the caretaker government faced was the global food and fuel price crisis of 2007 to 2008, which imposed enormous costs on Bangladesh's economy and on the welfare of its population, particularly the poor. Managing this crisis while maintaining macroeconomic stability and keeping the political transition process on track was one of the most demanding challenges of Fakhruddin Ahmed's tenure as Chief Adviser.

The global food price crisis was driven by a combination of factors including rising demand from the rapidly growing economies of China and India, supply disruptions from drought and other weather events in major grain-producing regions, the diversion of agricultural commodities to biofuel production in the United States and Europe, and speculation in commodity markets that may have amplified the underlying supply and demand pressures. The result was a dramatic and sustained increase in international prices for rice, wheat, edible oils, and other staples that imposed enormous costs on food-importing developing countries.

Bangladesh was particularly vulnerable to the food price crisis for several reasons. Rice is the staple food of virtually every Bangladeshi household, accounting for a large share of household expenditure particularly for the poor. Bangladesh was, during this period, a net rice importer, meaning that it depended on international markets for a portion of its rice supply, making it directly exposed to the global price increase. And the simultaneous occurrence of severe flooding, which damaged domestic rice crops, and Cyclone Sidr in November 2007, which devastated large areas of coastal Bangladesh and disrupted agricultural production, compounded the food security challenge.

For the approximately 60 million Bangladeshis who were estimated to spend 40 percent or more of their income on food, the rice price increases of 2007 and 2008 represented a severe welfare shock that translated directly into deteriorating nutritional status, reduced access to healthcare and education as households cut back on other expenditures, and increased vulnerability to a range of poverty-related risks. The International Crisis Group documented that rioting was occurring in Dhaka as a result of rising food prices by mid-2008, a sign of the severe social stress that the food price crisis was creating.

The caretaker government's response to the food price crisis was a complex combination of emergency relief measures, market interventions, and longer-term policy adjustments. In the immediate term, the government expanded the Open Market Sale (OMS) program through which subsidized rice was sold to poor households at prices below the market, drawing on government stocks accumulated through procurement at harvest time. It also increased social safety net transfers and expanded food-for-work and cash-for-work programs that provided income support to the poor while building rural infrastructure.

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The macroeconomic dimensions of the food price crisis were managed through a careful balance of fiscal and monetary policy. The government faced pressure to expand subsidies and transfers in response to the social crisis, which would have expanded the fiscal deficit and potentially required inflationary monetary financing. Against this pressure, the caretaker government's economic team sought to maintain fiscal discipline, relying on targeted relief rather than universal subsidies and seeking additional external financing to cover the increased social spending without monetization.

The global fuel price crisis of 2007 to 2008, which saw oil prices reach record levels above 140 dollars per barrel by mid-2008, created a parallel set of challenges. Bangladesh was heavily dependent on imported petroleum products for transport and industrial power, and the international price increases translated directly into higher domestic production costs, transport costs, and inflation. The government maintained administered domestic prices for petroleum products below international levels, but the resulting subsidies imposed a growing fiscal burden.

The decision, implemented in July 2008, to increase domestic fuel prices by approximately 40 percent to align them more closely with international prices was macroeconomically rational but socially and politically costly. The price increase contributed to a further rise in inflation and to public discontent with the caretaker government that was already accumulating from the sustained restrictions on political activity and the generally difficult economic environment.

15.3 Fiscal Policy During the Caretaker Period: Discipline and Development

The fiscal management of the caretaker government was one of its more technically accomplished dimensions. Maintaining fiscal discipline in conditions of political emergency, with simultaneously rising expenditure pressures from the food and fuel crises and constrained revenue performance, required careful and systematic management of public finances.

The government maintained a fiscal deficit of 3.3 percent of GDP in fiscal year 2008, well below the target of 4.5 percent that had been set in the framework agreed with the IMF. This performance reflected both active expenditure management, including restraint in capital spending on some development projects, and improved revenue performance driven by administrative reforms in tax collection. Tax revenues rose by 27 percent in fiscal year 2008, reaching 11.4 percent of GDP and surpassing initial targets by 0.5 percentage points of GDP.

The improvement in tax revenue performance reflected ongoing efforts to reform Bangladesh's tax administration, which was chronically weak. Bangladesh has historically been characterized by very low tax-to-GDP ratios by international standards, reflecting a combination of structural factors including a large informal economy, weak administration, widespread evasion, and an unnecessarily complex tax code with numerous exemptions and concessions that erode the tax base. Improving revenue performance is one of the most important long-term fiscal priorities for Bangladesh, as it is the foundation for funding the public services and investment that development requires.

The caretaker government's development expenditure was constrained by the general uncertainty of the political environment, which created difficulties in implementing complex development

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projects. Capital expenditure execution, historically a problem in Bangladesh where ambitious development plans are often implemented at well below the scheduled pace, continued to fall short of targets during the caretaker period. The Annual Development Program (ADP) for fiscal year 2008 was partially implemented, with political uncertainty and the diversion of government attention toward electoral preparations limiting the capacity for the normal processes of project implementation.

The fiscal framework for the caretaker period was supported by the IMF through a Poverty Reduction and Growth Facility (PRGF) arrangement, which provided both financial support and a framework of policy commitments that reinforced the government's fiscal discipline. The existence of the IMF arrangement was important not only for the direct financial resources it provided but also for the signal of international confidence that it sent to other donors and creditors. It helped to maintain the flow of external development finance at a time when political uncertainty might otherwise have deterred donors.

15.4 The Macroeconomics of Transition: Growth, Investment, and Economic Confidence

The broader macroeconomic performance of the Bangladesh economy during the caretaker period was creditable given the difficult circumstances. Real GDP growth of 6.2 percent in fiscal year 2008 exceeded projections, driven by strong agricultural output following a recovery from the floods and cyclone of 2007, continued expansion of RMG exports, and robust remittance inflows. This growth performance was remarkable given the combination of political uncertainty, global commodity price pressures, and the aftermath of natural disasters that the economy faced.

But aggregate growth statistics mask important distributional dimensions that are crucial to a full assessment of the economic record of the caretaker period. The poor, who spend a disproportionate share of their income on food, were severely affected by the food price crisis, experiencing a deterioration in real living standards even as aggregate GDP continued to grow. The urban informal sector workers, who had neither the job security of formal employment nor the safety net of rural subsistence agriculture, were particularly exposed to the economic stresses of the period.

The investment climate during the caretaker period was inevitably affected by political uncertainty. Private investment, both domestic and foreign, responded to the emergency declaration and the political unpredictability of the transition period by moving cautiously. The stock market, which had been on an upward trajectory through much of the preceding period, experienced significant volatility and uncertainty. The business community, while broadly supportive of the anti-corruption agenda that the government was pursuing, was concerned about the risks of being drawn into the corruption investigations and about the general environment of uncertainty.

The management of this investment climate challenge required the caretaker government to work actively to reassure the business community that legitimate business activity would not be disrupted, that contractual commitments would be honored, and that the fundamentals of the economic policy framework would remain stable through the transition. This communication

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function was one in which Fakhruddin Ahmed's international credibility and his relationships with the business and development communities were directly valuable.

15.5 The Ready-Made Garment Sector: Engine of Growth and Social Transformation

No analysis of the Bangladesh economy during the Fakhruddin Ahmed period would be complete without focused attention on the ready-made garment sector, which was not only the primary engine of economic growth but also the most important vehicle for the social transformation that was simultaneously occurring in Bangladesh.

The RMG sector's social significance lay primarily in its role as a massive employer of women. By the mid-2000s, the sector employed approximately 3.5 to 4 million workers, more than 80 percent of whom were women, the great majority from rural areas. These women had migrated to the cities, primarily Dhaka and Chittagong, in search of economic opportunity that was unavailable in the villages from which they came. In the garment factories, they earned wages that, while low by international standards, represented a dramatic improvement over the alternatives available to them in the rural economy.

The social consequences of this female employment were far-reaching. Women earning independent incomes had greater bargaining power within their households, greater ability to make decisions about their own health care, nutrition, and family formation, and greater social standing in their communities. The children of working mothers in the RMG sector showed improvements in educational attainment and health outcomes relative to comparable children in households without such employment. The broader transformation of women's roles and social position that the RMG sector facilitated contributed to the dramatic improvements in gender indicators that Bangladesh achieved from the 1990s onward.

The sector's survival of the end of the MFA in 2005 demonstrated a resilience and competitive capacity that surprised many analysts. The caretaker government's economic policies contributed to maintaining this resilience by sustaining a broadly favorable macroeconomic environment for export-oriented manufacturing. The exchange rate management was particularly important: maintaining a competitive taka was crucial for the continued price competitiveness of Bangladeshi garments in international markets.

The sector's growth also created challenges that the caretaker period could not fully address. Working conditions in the garment factories were, by any international standard, poor: factories were overcrowded, ventilation was inadequate, fire safety standards were minimal, and workers had very limited legal protections or union rights. These conditions would later become the subject of international attention, culminating in the Rana Plaza disaster of 2013, in which the collapse of a garment factory building killed more than 1,100 workers, the deadliest industrial accident in the history of the garment industry.

The caretaker period saw some tentative moves toward improving labor rights and working conditions, but the fundamental political economy of the RMG sector, in which both major parties were aligned with the factory owners and in which the government was reluctant to

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impose costly compliance requirements on a sector so central to export earnings and employment, made genuinely transformative change very difficult.

15.6 Banking Sector Reform Continued: NPLs, Governance, and Financial Stability

The reforms that Fakhruddin Ahmed had initiated at Bangladesh Bank continued to be relevant during the caretaker period, when he was now responsible for the overall governance environment within which the banking sector operated. The legacy of his Bangladesh Bank tenure, particularly the corporate governance reforms and the floating exchange rate, provided a better foundation for managing the economic challenges of the 2007 to 2009 period than would have existed without those reforms.

The problem of non-performing loans in the banking sector remained a chronic challenge throughout the caretaker period and beyond. State-owned commercial banks continued to carry large NPL ratios that reflected both the accumulation of historical lending decisions made on political rather than commercial grounds and the ongoing difficulty of loan recovery in an environment where powerful debtors had political connections that protected them from genuine enforcement.

The caretaker government's anti-corruption campaign had an indirect but important dimension in the banking sector: by prosecuting powerful businessmen and politicians who had accumulated NPLs through politically protected borrowing, the government was, at least in principle, beginning to address the systemic conditions that created the NPL problem. Whether these prosecutions translated into genuine loan recovery or merely into symbolic accountability is harder to assess; the political dynamics of Bangladesh's banking sector meant that NPL recovery was always a secondary consideration relative to the political management of relationships with powerful borrowers.

The institutional framework for bank supervision and regulation that Fakhruddin Ahmed had developed at Bangladesh Bank continued to evolve during the caretaker period, though the political attention of the government was understandably focused on the transition process rather than on technical banking regulation. The foundation for a more rigorous approach to banking supervision had been laid, but the implementation would depend on the commitment of subsequent governments to maintain the standards that had been established.

The latest IMF assessments of Bangladesh's financial sector, from late 2025, indicate that banking sector vulnerabilities remain a serious concern more than two decades after Fakhruddin Ahmed's reforms at Bangladesh Bank. The IMF's November 2025 Article IV consultation statement identified "undercapitalization in the financial sector" as a major challenge and called for "addressing financial sector vulnerabilities" as a priority. This persistent fragility reflects the depth and resilience of the structural and political economy problems that Fakhruddin Ahmed sought to address, and it underscores the difficulty of achieving lasting institutional change in environments where the political incentives for reform are weak.

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CHAPTER SIXTEEN: BANGLADESH'S DEVELOPMENT TRAJECTORY: FROM THE CARETAKER PERIOD TO 2026

16.1 The Continuity and Change in Bangladesh's Economic Story

Bangladesh's economic trajectory from the end of the caretaker period in January 2009 through to the present day in 2026 is a story of both remarkable achievement and persistent structural weakness, and of the complex relationship between governance quality and economic performance. Understanding this trajectory is essential to assessing the long-run significance of the caretaker period's economic reforms and management.

The period from 2009 to 2019, under the Awami League government of Sheikh Hasina, was in economic terms one of Bangladesh's most successful decades. GDP growth averaged close to 7 percent per year, poverty reduction continued at a rapid pace, and Bangladesh achieved the income thresholds required for graduation from the United Nations' category of Least Developed Countries. The ready-made garment sector continued to grow, remittances remained robust, and improvements in agricultural productivity supported rural incomes. The World Bank's assessment noted that Bangladesh lifted approximately 34 million people out of poverty between 2010 and the early 2020s.

But this economic achievement coexisted with, and in some respects depended upon, governance arrangements that were increasingly problematic from the perspective of democratic accountability and the rule of law. The political manipulation of elections from 2014 onward, the systematic corruption that the Awami League government institutionalized, and the progressive weakening of independent institutions including the judiciary, the anti-corruption commission, and the media, created conditions that undermined the foundations for sustainable inclusive growth even as aggregate economic statistics remained positive.

The economic governance problems became increasingly visible from the late 2010s onward. The banking sector, plagued by politically connected bad lending and inadequate enforcement of prudential standards, accumulated NPLs at a rate that represented a growing systemic risk. The energy sector, despite substantial expansion of generation capacity, was characterized by expensive and inefficient power purchase arrangements with private generators that imposed enormous costs on public finances and on consumers. Capital flight associated with corruption drained resources that could have been productively invested domestically.

16.2 The August 2024 Uprising and Economic Aftermath

The mass uprising that toppled Sheikh Hasina in August 2024 had both political and economic dimensions. The economic grievances that contributed to popular discontent included rising inflation, high youth unemployment, and the perception that economic growth had benefited the politically connected elite disproportionately while leaving ordinary working-class and middle-class Bangladeshis struggling with the cost of living.

The economic situation that the interim government of Muhammad Yunus inherited in August 2024 was considerably more difficult than what the Fakhruddin caretaker government had faced

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in 2007. According to the IMF's November 2025 assessment, Bangladesh's GDP growth decelerated to 3.7 percent in fiscal year 2025, reflecting the disruptions of the uprising period, a tightened policy mix aimed at reducing inflation and rebuilding foreign exchange reserves, and heightened uncertainty that depressed investment. Headline inflation remained elevated at 8.2 percent as late as October 2025, reflecting both the demand pressures of the preceding period and the impact of exchange rate depreciation following the adoption of a more market-determined exchange rate.

The comparison between the economic challenges facing the Yunus interim government in 2024 to 2026 and those facing the Fakhruddin caretaker government in 2007 to 2009 is instructive. In both cases, an interim government inherited an economy in need of macroeconomic stabilization and structural reform while also managing a complex political transition. In both cases, the international financial community provided critical support in the form of IMF arrangements and development bank financing. And in both cases, the fundamental challenge was not merely macroeconomic management but the creation of institutional conditions for more sustainable and inclusive development.

The IMF's assessment of Bangladesh's economic situation as of late 2025 was broadly consistent with the assessment that Fakhruddin Ahmed and his team would have made of the economy in 2007: the need for ambitious fiscal reform, particularly in tax administration; the urgency of addressing banking sector vulnerabilities; the importance of maintaining exchange rate flexibility; and the critical importance of governance reform as a foundation for sustainable economic development. The persistence of these themes across nearly two decades suggests that the structural reforms of the caretaker period, while genuine in their intent and significant in their immediate impact, did not achieve the lasting institutional transformation that was needed.

The BNP's supermajority victory in the February 2026 parliamentary elections, reported by economic monitoring services, and the passage of a referendum including anti-corruption measures and some rebalancing of executive power, represent the latest chapter in Bangladesh's unfinished democratic story. Whether these political developments will translate into the sustained institutional reform that Bangladesh's economic development requires remains the defining question.

16.3 What Bangladesh's Development Story Teaches: Lessons for Development Theory

Bangladesh's development experience over the past half century, including the specific episode of the Fakhruddin caretaker government, offers a rich empirical laboratory for testing and developing theories of economic development. The country has confounded predictions on multiple occasions: surviving independence despite dire assessments of its prospects, achieving significant poverty reduction despite weak governance, developing a major export industry in extremely difficult conditions, and demonstrating that rapid improvements in health and education outcomes are possible even at very low income levels.

The development economics literature has increasingly sought to understand Bangladesh as a distinctive development model with implications for the field as a whole. Amartya Sen and Jean Dreze have pointed to the Bangladesh case as evidence that improvements in human

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development, particularly for women and girls, can be achieved ahead of economic growth through public health and education investments and through the empowerment of women through microfinance, the garment sector, and social programs. Raghabendra Chattopadhyay and Esther Duflo's work on women's political participation in India has been paralleled in Bangladesh by research on the social impacts of women's economic empowerment.

The World Bank's 2025 Bangladesh Poverty and Equity Assessment drew attention to a significant slowdown in poverty reduction after 2016, noting that while Bangladesh had achieved impressive gains in the earlier period, the pace of poverty reduction had decelerated and that one-third of the population remained vulnerable. This finding points to the limits of growth-led poverty reduction in an economy where inequality is significant and where the quality of institutions and governance affects the distribution of growth benefits. It also raises questions about whether the institutional reforms of the Fakhruddin period and subsequent years have been adequate to create the conditions for more inclusive growth.

The assessment identifies "more and better jobs" as the critical need for Bangladesh's poverty reduction agenda going forward, a conclusion that connects directly to the structural reforms that the country has consistently delayed: improving the investment climate, developing human capital, addressing infrastructure bottlenecks, and building the institutional framework for a more diverse and sophisticated economy. These are precisely the kinds of structural reforms that Fakhruddin Ahmed's economic philosophy, rooted in development economics and institutional theory, would have emphasized.

16.4 The Washington Consensus and Beyond: Evolution of Development Thinking

The intellectual framework of development economics has evolved significantly since Fakhruddin Ahmed completed his doctoral training at Princeton in the 1970s, and these intellectual developments are relevant to understanding both the reforms he pursued and their long-run effectiveness. The Washington Consensus, the set of policy prescriptions associated with the World Bank and IMF in the 1980s and 1990s, represented a specific moment in the evolution of development thinking that shaped the international policy environment within which Bangladesh's economic reforms were pursued.

The Washington Consensus, a term coined by John Williamson in 1989, identified ten policy prescriptions that were broadly agreed upon by the Washington-based international financial institutions as appropriate for developing countries: fiscal discipline, reorientation of public expenditure toward basic health and education, tax reform, financial liberalization, unified and competitive exchange rates, trade liberalization, openness to foreign direct investment, privatization, deregulation, and protection of property rights. These prescriptions reflected the neoliberal intellectual turn of the 1980s and the reaction against the statist development models that had been associated with underperforming developing-country economies.

The Washington Consensus came under intense criticism from the late 1990s onward, following the Asian financial crisis of 1997 to 1998, which demonstrated that rapid financial liberalization without adequate institutional safeguards could produce devastating instability, and following growing evidence that the structural adjustment programs mandated by the IMF and World Bank

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had often imposed severe social costs without producing the promised economic benefits. Joseph Stiglitz, who served as Chief Economist of the World Bank from 1997 to 2000, was the most prominent institutional critic, arguing in a series of papers and in his book Globalization and Its Discontents (2002) that the Washington Consensus ignored crucial market failures and institutional requirements for successful development.

The post-Washington Consensus that emerged from this intellectual turmoil emphasized institutional quality, governance, and social infrastructure as determinants of development outcomes alongside the more narrowly economic policies of the original consensus. Daron Acemoglu and James Robinson's work on institutions as the fundamental cause of long-run comparative economic performance, culminating in their book Why Nations Fail (2012), provided a new theoretical foundation for the emphasis on governance and institutions that the post-Washington Consensus represented.

Fakhruddin Ahmed's own intellectual formation, combining the development economics tradition with the World Bank's evolving institutional emphasis, placed him naturally in the post-Washington Consensus camp. His reform agenda at Bangladesh Bank, with its emphasis on corporate governance, regulatory independence, and institution-building alongside the more traditional macroeconomic reforms, reflected this broader institutional perspective. His anti-corruption campaign as Chief Adviser can also be understood in these terms: as an attempt to address one of the most fundamental institutional failures, pervasive corruption, that the institutional economics literature identifies as a primary obstacle to economic development.

16.5 The Political Economy of Economic Reform: Theory and Bangladesh Evidence

One of the most important and practically relevant bodies of theory in contemporary economics and political science is the political economy of economic reform: the analysis of why economic reforms are sometimes adopted and implemented and sometimes blocked, of who wins and loses from reforms, and of how reform coalitions can be built in ways that make reform sustainable.

The fundamental insight of political economy analysis is that economic reforms are not merely technical exercises in optimizing policy but are political processes involving competing interests, power dynamics, and strategic calculations. Every significant economic reform creates winners and losers: liberalization creates competitive pressures that threaten established interests; financial sector reform threatens the profits of banks that benefit from regulatory protection; anti-corruption campaigns threaten the networks of political patronage that sustain powerful political actors. The political feasibility of reform depends on whether the losers from reform have sufficient political power to block it and on whether the winners from reform can be organized to support it effectively.

Applied to the Bangladesh context, this framework helps to explain both the achievements and the limitations of the Fakhruddin government's economic reform agenda. The achievements were greatest in areas where the caretaker government had a specific institutional advantage: areas where reforms could be implemented through executive action by a government that was not beholden to the powerful interests that had previously blocked change. The floating of the exchange rate, the corporate governance requirements, the anti-corruption campaign: these were

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actions that previous elected governments had been unable or unwilling to take because of the political costs involved, but that the caretaker government could implement precisely because it was insulated from the normal political constraints.

The limitations were most apparent in areas where reform required sustained commitment from subsequent elected governments, where the political economy of Bangladesh reasserted itself after the transition, reversing or diluting the reforms of the caretaker period. The abolition of the anti-corruption commission's independence by the subsequent Awami League government, the reemergence of politically connected NPLs in the banking sector, and ultimately the abolition of the caretaker system itself, all reflect the political economy logic of reform reversal: powerful interests that had been temporarily constrained by the caretaker government mobilized to restore the arrangements from which they benefited.

This pattern of reform and reversal is a common one in development economics, and it points to the fundamental importance of building reforms into institutional and legal frameworks that are robust enough to survive changes in government. The most durable reforms are those that are embedded in constitutional or quasi-constitutional arrangements, supported by strong international commitments, or aligned with the interests of sufficiently powerful domestic constituencies. The caretaker system's restoration through the Supreme Court's 2025 judgment is a hopeful example of such embedding: by grounding the caretaker system in a constitutional jurisprudence that recognizes it as an expression of constituent power beyond ordinary parliamentary amendment, the court has given the system a protection that ordinary legislation cannot provide.

CHAPTER SEVENTEEN: THE ECONOMICS OF DEMOCRATIC CONSOLIDATION: THEORY, EVIDENCE, AND BANGLADESHI IMPLICATIONS

17.1 Does Democracy Cause Development? The Political Economy of Growth

One of the oldest and most debated questions in the social sciences is the relationship between political regime type, whether democracy or authoritarianism, and economic development. This question is directly relevant to the Bangladesh case, where transitions between different forms of governance have been associated with varying economic outcomes, and where the economic credentials of the Fakhruddin technocratic government have sometimes been invoked in debates about the relative merits of democratic versus expert-led governance.

The theoretical arguments about the relationship between democracy and economic development are deeply contested. On one side, theorists following Mancur Olson's (1982) analysis of collective action argue that democracies are prone to capture by special interest groups, distributional coalitions that use political organization to extract rents from the productive economy at the expense of overall efficiency and growth. The institutional capture by labor unions, agricultural lobbies, and other organized interests that Olson identified in mature democracies can, on this analysis, produce growth-hampering redistribution and regulatory burden.

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On the other side, theorists in the tradition of Douglas North and Barry Weingast's work on the "credible commitment" problem in political institutions argue that democracy, by distributing political power more broadly and by creating accountability mechanisms that constrain arbitrary governmental action, creates a more credible commitment to property rights protection and rule of law that is conducive to investment and growth. Autocracies, on this view, suffer from a fundamental commitment problem: even a benevolent autocrat cannot credibly commit not to expropriate the assets of productive individuals and firms, because no independent institution constrains his power to do so. Democracy, by distributing power and creating accountability, provides a more credible commitment to the rules that investors and entrepreneurs need to plan and invest effectively.

The empirical evidence on this question is genuinely mixed and sensitive to methodological choices, sample selection, and time period examined. Cross-country regressions consistently fail to find a robust positive effect of democracy on economic growth, and some studies find negative effects, particularly in the short run. But more nuanced analyses, which distinguish between different aspects of democratic governance and which examine longer time periods, often find that the components of democracy most directly related to rule of law, property rights protection, and constrained executive power are positively associated with growth.

The Bangladeshi experience provides interesting evidence on this question, because the country has experienced multiple different governance arrangements, including parliamentary democracy, military rule, and technocratic caretaker governance, with varying economic outcomes. The period of most rapid and sustained economic growth, roughly 2009 to 2019, occurred under a formally democratic government that was, in practice, becoming increasingly authoritarian and corrupt. This suggests that the relationship between formal political institutions and economic performance is mediated by a variety of other factors, including the specific policy choices of governments, the quality of economic management, and the external environment.

17.2 Technocracy and Democracy Revisited: Reconsidering the Tension

The Fakhruddin Ahmed episode raises in particularly sharp form the question of the proper relationship between technical expertise and democratic accountability in governance. This is not merely an academic question; it is one that has become increasingly important in the contemporary world as the complexity of economic and technical policy challenges has grown and as democratic publics have shown increasing skepticism about the capacity of elected politicians to address these challenges competently.

The theoretical literature on technocracy in democratic governance has evolved significantly from the simple opposition between expert rule and democratic self-government that characterized earlier debates. Contemporary scholars like Mark Moore, Yves Meny, and most influentially Peter Mair in his posthumous Ruling the Void (2013) have developed more nuanced analyses of the ways in which technical expertise and democratic accountability can be combined without one simply overwhelming the other.

Moore's concept of "public value," developed in his Creating Public Value: Strategic Management in Government (1995), argues that the primary purpose of public sector managers

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is to create value for the public, understood in a broad sense that includes both technical outcomes and the democratic legitimacy of the processes through which those outcomes are achieved. On Moore's analysis, the technically competent manager and the democratically accountable official are not opposed but complementary: genuine public value is created only when technical competence is exercised in the service of democratically legitimate purposes.

The challenge for Bangladesh, as for many developing democracies, is to develop the institutional arrangements that allow technical expertise to inform and improve policy without displacing democratic accountability. This is a challenge that requires both better capacity in elected governments and politicians, and better mechanisms for incorporating technical expertise into the democratic process without creating unaccountable technocratic fiefdoms.

The history of the Fakhruddin government suggests that technocratic governments, even when they pursue genuinely valuable reforms, are inherently limited as vehicles for sustainable democratic development. The reforms they implement are vulnerable to reversal by subsequent elected governments, because technocratic governments lack the popular legitimacy that would make their reforms binding on successors. The deeper institutional and cultural changes that sustainable democratic development requires, changes in political culture, in the norms of democratic competition, in the internalization of constitutional values by all significant political actors, cannot be imposed from above by technocratic administrators but must be built through the long, difficult, and often frustrating process of democratic political development.

17.3 Financial Inclusion and the Future: Connecting the PKSF Legacy to 2026

The microfinance and financial inclusion agenda that Fakhruddin Ahmed pursued at PKSF connects to one of the most dynamic and rapidly evolving areas of contemporary development policy: the revolution in digital financial services and mobile money that is transforming the landscape of financial access for poor people in developing countries.

Bangladesh has been at the forefront of this revolution through the mobile financial services platform bKash, which since its launch in 2011 has grown into one of the most successful mobile money platforms in the developing world, processing hundreds of millions of transactions and serving tens of millions of users, many of whom had never previously had access to formal financial services. The growth of bKash and its competitors has dramatically expanded access to payment services, savings, and increasingly to credit for segments of the population that the traditional MFI network had not reached.

The digital financial services revolution creates new possibilities for the financial inclusion agenda that PKSF has always represented, while also creating new challenges. The ability to deliver financial services cheaply and at scale through mobile platforms reduces the cost of financial intermediation and expands potential reach. But it also raises questions about consumer protection, about the quality of the financial products delivered through these channels, and about the adequacy of the regulatory framework for governing a rapidly evolving technology-driven financial landscape.

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The World Bank Group's April 2025 Country Private Sector Diagnostic for Bangladesh identified digital financial services as one of four priority sectors where targeted policy actions could create substantial employment and economic opportunity. The report noted that reforms to the regulatory framework for digital financial services could create between 96,000 and 460,000 new formal jobs, reflecting the enormous economic potential of a well-functioning digital financial ecosystem.

This potential connects directly to the foundations that the Fakhruddin period and earlier reforms had laid: a regulatory framework for mobile financial services that was built on the foundation of the banking regulatory infrastructure that Fakhruddin Ahmed had helped to strengthen at Bangladesh Bank; a financial system with more market-based interest rate and exchange rate management than had existed before his tenure; and an institutional culture in which the central bank's role as a regulator rather than merely an accommodator of government financing needs had been more clearly established.

17.4 The Fiscal Challenge: Revenue Mobilization and Development Finance

Perhaps the most persistent and structurally important economic challenge facing Bangladesh in 2026 is the weakness of its fiscal system, particularly its low level of tax revenue as a share of GDP. Bangladesh's tax-to-GDP ratio has historically been among the lowest in the world, reflecting both structural features of the economy and deep-seated weaknesses in tax administration. The IMF's 2025 Article IV consultation statement identified "ambitious tax reform" as "vital" and specifically called for eliminating reduced VAT rates and removing exemptions, increasing corporation tax minimum rates, and strengthening tax administration.

This fiscal challenge is directly relevant to the assessment of the Fakhruddin government's economic legacy, because the fiscal reforms of the caretaker period, while they produced a temporary improvement in revenue performance during 2007 to 2008, did not achieve the lasting structural transformation of the tax system that would have generated sustained improvements in fiscal capacity. The tax-to-GDP ratio that was 11.4 percent in fiscal year 2008 was only marginally higher than it had been before the caretaker period and remained far below the levels achieved by countries at comparable income levels.

The fiscal weakness is not merely a technical problem of tax administration, though administration is certainly a dimension of it. It is also a political economy problem: the exemptions, preferences, and loopholes that erode the tax base exist because powerful interests benefit from them and use their political connections to protect them. Tax reform of the kind the IMF recommends, which would eliminate many of these preferences and create a broader, more uniform tax base, requires overcoming the political resistance of those who benefit from the current system.

This is precisely the kind of structural reform that elected governments with diverse and powerful constituencies find very difficult to implement, because the losers from reform are concentrated and well-organized while the gainers, who are the general public benefiting from better-funded public services, are diffuse and difficult to organize. It is also the kind of reform that a caretaker government, insulated from the normal political pressures, might in principle be

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better positioned to implement, though it is a change of such long-run structural significance that it would require sustained implementation by subsequent elected governments to produce lasting results.

17.5 Infrastructure, Energy, and the Structural Transformation of Bangladesh's Economy

The economic challenges facing Bangladesh in 2026 include not only the fiscal and financial sector vulnerabilities that the IMF and World Bank have emphasized but also a broader set of structural transformation challenges that will determine whether Bangladesh can sustain the economic dynamism needed to continue reducing poverty and to provide productive opportunities for its rapidly growing workforce.

Bangladesh's economy has long been concentrated in a narrow range of sectors, with RMG exports accounting for roughly 80 percent of merchandise export earnings. This concentration creates vulnerability to sector-specific shocks, including changes in global fashion industry dynamics, shifts in the competitive landscape following changes in trade agreements or labor cost differentials, and environmental and climate shocks that affect cotton and other textile raw materials. Diversifying the export base and developing new sources of comparative advantage are critical long-term economic priorities.

The infrastructure constraints that have limited Bangladesh's economic diversification are themselves a legacy of decades of inadequate public investment and governance failures in project implementation. The energy sector has long been the most binding infrastructure constraint, with insufficient and unreliable electricity supply imposing significant costs on manufacturing and services businesses. Despite substantial expansion of power generation capacity since the early 2010s, the electricity sector continues to be characterized by high costs, significant reliance on expensive emergency power purchase agreements, and inadequate transmission and distribution infrastructure.

The caretaker period of 2007 to 2009 did not substantially address the energy infrastructure challenge; the government's attention and resources were primarily absorbed by the political transition and the immediate macroeconomic challenges of the food and fuel price crises. The longer-term structural transformation challenges that Bangladesh faces today, including energy infrastructure development, economic diversification, human capital development, and institutional reform, require sustained commitment over decades rather than years, and they ultimately depend on the quality of democratic governance that allows these long-run priorities to be consistently pursued despite the short-term pressures of electoral politics.

CHAPTER EIGHTEEN: SYNTHESIZING THE ECONOMIC LEGACY: FAKHRUDDIN AHMED AS DEVELOPMENT ECONOMIST AND STATESMAN

18.1 The Coherence of an Economic Career

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Looking across the full span of Fakhruddin Ahmed's economic career, from his early academic formation in development economics through his civil service roles in Pakistan and Bangladesh, his two decades at the World Bank, his tenure as Bangladesh Bank Governor, his leadership of PKSF, and his economic management as Chief Adviser, what emerges is a career of unusual coherence and intellectual consistency.

The thread that runs through all of these roles is a commitment to the application of rigorous economic analysis to the practical challenges of development in a poor country with difficult institutional conditions. This commitment expressed itself differently in different roles: as theoretical analysis in his academic training, as macroeconomic policy in his central banking role, as poverty-focused development finance in his PKSF role, and as the integration of economic management with political transition management in his Chief Adviser role. But the underlying intellectual orientation, the conviction that economic problems have structural causes that can be identified through systematic analysis and addressed through well-designed policies and institutions, was consistent throughout.

This intellectual consistency also manifested in a consistent set of analytical priorities. Throughout his career, Fakhruddin Ahmed emphasized institutions over policies: the insight that getting the institutional framework right, meaning independent and competent regulatory institutions, credible rule of law, transparent and accountable governance, is at least as important as getting specific policy parameters correct. He emphasized governance over growth: the understanding that economic growth that is not accompanied by improvements in governance quality is not sustainable and does not reliably translate into improvements in the welfare of the poor. And he emphasized capacity building over technical assistance: the recognition that lasting development requires the development of domestic institutional and human capacity rather than reliance on external expertise.

18.2 The Intellectual Interlude: The Williams College Connection

Fakhruddin Ahmed's academic connection to Williams College in Massachusetts, where he obtained his second Master's degree in Development Economics in 1971, is worth examining in its own right as a window into the intellectual world that shaped his thinking. Williams College, while not among the largest or most prominent economics departments in the United States, has a distinguished tradition of engaged scholarship that connects academic rigor with practical concern for the problems of development and poverty.

The development economics program at Williams in the early 1970s was part of a broader movement in American economics to engage seriously with the problems of the developing world. This was the period when development economics was, as noted in Part One, grappling with the failures of the growth-focused development strategies of the 1950s and 1960s and seeking new approaches that would more effectively address the needs of the world's poor. The Williams program exposed its students to the debates of this period with a combination of theoretical rigor and empirical engagement that was well-suited to the training of development practitioners.

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The Williams College Annual Giving and alumni engagement records indicate that Fakhruddin Ahmed maintained an ongoing relationship with the institution, reflecting the lasting impact of his time there. His inclusion in Williams College's documentation of distinguished alumni when he became Chief Adviser of Bangladesh speaks to the pride that the institution took in his career and to the recognition that his achievements represented a vindication of the kind of practically oriented development economics training that Williams provided.

The connection between academic formation and practical achievement that the Williams College connection represents is itself a theme of broader intellectual significance. Development economics as a discipline has long grappled with the question of how to train practitioners who are both technically sophisticated and practically effective. The most influential development economists, from Arthur Lewis and Gunnar Myrdal to Amartya Sen and Daron Acemoglu, have combined technical rigor with genuine engagement with the practical and political dimensions of development in ways that transcend the purely academic. Fakhruddin Ahmed's career represents a specific version of this synthesis, in which the economist's analytical tools were applied directly to the governance and institutional challenges of a specific developing country.

18.3 The World Bank Formation: Development Orthodoxy and Heterodox Pressures

Fakhruddin Ahmed's more than twenty years at the World Bank coincided with some of the most significant intellectual transformations in the institution's history and in development economics more broadly. Understanding how his World Bank experience shaped his economic thinking requires engaging with the intellectual debates that were live at the institution during his tenure.

The World Bank of the late 1970s and 1980s was in the midst of a fundamental intellectual shift from the project-focused, investment-led development approach of the McNamara era toward the structural adjustment and policy reform emphasis of the Reagan-Thatcher period. The institution's new operational approach, associated with the structural adjustment lending that was introduced in 1980, reflected the intellectual influence of the monetarist and neoliberal economics that was ascending in academic and policy circles during this period.

Fakhruddin Ahmed's work in the World Bank's resident mission in Kenya and his subsequent roles across South Asia, East Asia, and Africa gave him a front-row seat to the implementation and consequences of structural adjustment programs in multiple developing country contexts. This experience was formative, not simply in the sense of confirming the institutional orthodoxy but in the sense of generating a nuanced, evidence-based assessment of what worked and what did not work in different contexts.

The accumulated evidence of World Bank operations that Ahmed observed over twenty years consistently pointed to the importance of institutional context and capacity in determining whether policy reforms produced their intended outcomes. The same formal policy change, trade liberalization, financial sector deregulation, privatization, could produce dramatically different results depending on whether the institutional infrastructure necessary to make it work well was present. In countries with strong institutions, clear property rights, effective contract enforcement, and competent regulatory capacity, market-oriented reforms tended to produce

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positive outcomes. In countries where these institutional foundations were weak or absent, the same reforms often produced disappointment or outright failure.

This lesson from his World Bank experience directly informed Fakhruddin Ahmed's approach both to central banking reform and to the broader governance agenda of the caretaker government. His consistent emphasis on institution-building alongside policy reform, on creating the organizational capacity and the governance standards necessary to make new policies work, reflected a World Bank experience that had taught him the limits of purely technical policy approaches.

18.4 The Economic Philosophy of Pragmatic Institutionalism

Synthesizing the various intellectual influences on Fakhruddin Ahmed's economic thinking, what emerges is a distinctive economic philosophy that might be characterized as "pragmatic institutionalism." This is not a label that Fakhruddin Ahmed ever used for his own approach, but it captures something important about the way he combined economic analysis with practical policy.

Pragmatic institutionalism, as a development economics approach, holds several key propositions. First, institutions matter enormously for economic outcomes, perhaps more than specific policy parameters. The quality of a country's institutional framework, including its governance institutions, regulatory bodies, legal system, and civil service, is a primary determinant of whether economic policies produce their intended results. Second, institutional reform is more important and more difficult than policy reform, because institutions are embedded in social and political relationships that give powerful groups an interest in their perpetuation. Third, institutional reform requires attention to political economy, to understanding whose interests are served by existing institutions and how reform coalitions can be built that have sufficient political support to succeed. Fourth, in developing countries with weak institutions and limited state capacity, the priorities for reform must be carefully chosen, focusing on the most binding constraints rather than attempting comprehensive reform across all dimensions simultaneously. Fifth, international experience and international frameworks can be valuable resources for domestic reformers, providing both technical knowledge and the external credibility and pressure that can sometimes overcome domestic political resistance.

This philosophy is recognizable in the approach that Fakhruddin Ahmed took as Bangladesh Bank Governor: focusing on the most important institutional reforms (corporate governance, exchange rate management, banking regulation) rather than attempting to transform everything simultaneously; using the framework of IMF engagement to create external anchors for monetary discipline; building international credibility as a resource for navigating domestic political pressures. And it is recognizable in the approach he took as Chief Adviser: focusing the institutional reform agenda on a limited set of priority areas (judiciary, election commission, anti-corruption commission, voter registration) that were most directly relevant to the transition mandate; maintaining fiscal discipline through engagement with the IMF framework; and using international credibility to sustain donor support through a politically uncertain period.

18.5 Connecting the Economic and Constitutional Legacies

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The economic and constitutional legacies of the Fakhruddin Ahmed period are not separate stories but deeply interconnected dimensions of a single complex historical episode. The connection operates at multiple levels.

At the most basic level, the economic credibility that Fakhruddin Ahmed brought to the Chief Adviser role was a crucial element of the caretaker government's overall legitimacy. In a country where trust in political institutions was at a nadir and where the incoming government was operating under a cloud of constitutional questionability, the fact that its head was a man of impeccable economic credentials and international standing provided a dimension of legitimacy that purely political figures could not have provided. The international community's willingness to work with the caretaker government, to provide the IMF arrangement and donor support that sustained the economic management of the transition period, was significantly conditioned by the confidence that Fakhruddin Ahmed's professional background inspired.

At a deeper level, the economic and constitutional reforms of the caretaker period were addressed to the same underlying problem: the failure of Bangladesh's governance institutions to perform the functions that a functioning state requires. The judicial separation addressed the failure of the justice system to operate independently of the executive. The anti-corruption campaign addressed the failure of accountability mechanisms to constrain the abuse of governmental power for private gain. The electoral reforms addressed the failure of the electoral system to translate popular preferences into governmental authority through genuinely competitive elections. And the macroeconomic reforms, both during the Bangladesh Bank years and the caretaker period itself, addressed the failure of economic governance institutions to manage public finances, regulate the financial system, and manage the exchange rate in ways that supported sustainable economic development.

All of these failures are, at bottom, governance failures: failures of the state to perform the basic functions that theory and comparative evidence identify as essential for both democratic legitimacy and economic development. And all of the reforms of the Fakhruddin period were, at some level, attempts to address these governance failures, however imperfect and however constrained by the political conditions of the time.

The persistence of these governance failures into the present day, as evidenced by the ongoing challenges that the current interim government and the newly elected BNP government face in 2026, reflects the depth of the structural and political economy problems that the Fakhruddin period could only partially address. Sustainable improvement in Bangladesh's governance requires not just technical reforms in specific institutions but a fundamental shift in the political culture and incentive structure that governs how political actors behave, a shift that no single government, however competent, can accomplish on its own.

PREFATORY REMARKS ON PARTS THREE, FOUR, AND FIVE

Having established in Part One the biographical, constitutional, and philosophical foundations of the Fakhruddin Ahmed story, and in Part Two the economic dimensions of his career and

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governance, the remaining parts of this textbook turn to the deeper legal, comparative, and contemporary dimensions.

Part Three will undertake a detailed examination of the legal and constitutional framework of the caretaker period, analyzing the Emergency Powers Regulations, the specific provisions of the Bangladesh Constitution that governed the caretaker government's mandate, the legislative and ordinance-making activities of the caretaker period, the specific legal architecture of the anti-corruption campaign including the special courts and the emergency detention powers, and the evolution of Bangladesh's constitutional jurisprudence through the lens of both domestic and comparative constitutional law. Part Three will engage extensively with the Bengal and Bangladesh legal tradition, the colonial inheritance of the common law system, and the specific ways in which these legal traditions have shaped constitutional development in the post-independence period.

Part Four will situate the Fakhruddin Ahmed period within a comprehensive comparative constitutional framework, examining in detail the experience of other South Asian countries with caretaker and transitional governance arrangements, analyzing the theoretical literature on democratic transitions across multiple world regions, and examining the role of international institutions, particularly the United Nations, the World Bank, and the IMF, in shaping the context within which transitional governments operate. Part Four will also examine the philosophy of international election monitoring and the standards that international observer missions apply in assessing electoral credibility, drawing on the specific assessments of the December 2008 elections.

Part Five will bring the full weight of the preceding analysis to bear on the present moment, examining Bangladesh's constitutional reform process of 2024 to 2026 in depth, assessing the prospects for democratic consolidation in the light of the country's historical experience and the theoretical literature on democratic development, and drawing out the lessons of the Fakhruddin Ahmed period for the challenges that Bangladesh and other countries facing similar governance challenges confront in the contemporary world. Part Five will engage with the most recent constitutional developments, including the February 2026 elections, the full judgment of the Appellate Division on the 13th Amendment published in March 2026, and the broader implications of Bangladesh's constitutional evolution for theories of democratic development in the Global South.

End of Part Two: The Economics of Reform, Finance, and Development

Part Three: The Law in Crisis: Constitutional Framework, Emergency Powers, and Legislative Architecture of the Caretaker Period will follow in the next volume of this series.

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PART THREE: THE LAW IN CRISIS: CONSTITUTIONAL FRAMEWORK, EMERGENCY POWERS, AND LEGISLATIVE ARCHITECTURE OF THE CARETAKER PERIOD

Volume Three: From Constitutional Text to Constitutional Reality

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FOREWORD TO PART THREE

The first two parts of this textbook established the biographical, intellectual, economic, and philosophical foundations necessary to understand Fakhruddin Ahmed not merely as a historical figure but as a theoretically significant actor in the unfolding drama of Bangladeshi constitutionalism. Part One traced the man from his childhood in Munshiganj through the colonial twilight, the language movement, the Liberation War, and the institutions that shaped his mind and character. Part Two examined the economic dimensions of his career, his central banking philosophy, his approach to development finance, and the macroeconomic management of the caretaker period.

Part Three turns to the law itself. It examines the legal architecture within which the caretaker government of 2007 to 2008 operated, the constitutional provisions that authorized or arguably failed to authorize that government, the emergency powers that dramatically expanded its regulatory and coercive capacity, the legislative instruments through which it sought to reform the state, the anti-corruption framework that became its most controversial and consequential

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innovation, and the judicial institutions and traditions that provided both the legitimacy and the principal challenge to its exercise of authority.

The legal story of the Fakhruddin period is not a simple story. It is a story of competing constitutional logics, of the tension between formal legality and substantive legitimacy that runs through the deepest debates in jurisprudence, of the complicated relationship between law and politics in a young democracy with weak institutional foundations, and of the ways in which legal forms can both constrain and enable the exercise of power. It is a story that has acquired new and dramatic significance through the full judgment of the Appellate Division of the Supreme Court of Bangladesh published in March 2026, which revisited many of the legal questions first raised during the Fakhruddin period with an explicitness and a critical directness that no previous judicial utterance had matched.

This part of the textbook is organized across ten chapters, each of which addresses a distinct dimension of the legal and constitutional landscape of the caretaker period. The chapters engage extensively with the Bangladesh constitutional tradition, the colonial legal inheritance, the comparative constitutional literature on emergency powers and transitional governance, and the jurisprudential and philosophical traditions that provide the theoretical vocabulary for analyzing these questions. They draw on the most recent developments in Bangladesh's constitutional evolution, including the November 2025 Supreme Court judgment, the February 2026 elections and referendum, and the full March 2026 judgment on the 13th Amendment, to situate the legal legacy of the Fakhruddin period within the broader arc of Bangladesh's constitutional history.

CHAPTER NINETEEN: THE THIRTEENTH AMENDMENT AND THE CONSTITUTIONAL ARCHITECTURE OF NON-PARTY CARETAKER GOVERNMENT

19.1 The Origins of the Caretaker Concept: Political Necessity and Constitutional Innovation

The institution of the non-party caretaker government that provided the constitutional framework for Fakhruddin Ahmed's tenure as Chief Adviser was not a product of abstract constitutional design or foreign constitutional borrowing. It was a distinctly Bangladeshi invention born from the specific pathologies of Bangladeshi democratic practice, from the bitter experience of elections conducted under partisan governments in which the incumbents controlled state resources, administrative machinery, and law enforcement in ways that systematically disadvantaged their opponents and undermined the possibility of genuinely free and fair electoral competition.

The demand for a neutral caretaker government to oversee elections had its roots in the experience of the first several years of democratic governance following the fall of General Ershad's military government in December 1990. The 1991 elections, conducted under a non-partisan caretaker arrangement headed by Justice Shahabuddin Ahmed, were widely praised as the fairest elections Bangladesh had ever seen. This positive experience established a benchmark

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against which subsequent elections would be measured, and it created a powerful political expectation that future elections should similarly be conducted under neutral oversight.

The 1996 elections under Khaleda Zia's BNP government shattered that expectation. The Awami League and other opposition parties boycotted the February 1996 elections on the grounds that they would be neither free nor fair under a partisan government. Their assessment proved accurate, and the elections were so thoroughly boycotted that turnout was negligible and the results had no political legitimacy. The resulting crisis forced Khaleda Zia to accept a constitutional amendment that institutionalized the caretaker government system, making it a permanent feature of Bangladesh's constitutional architecture.

The Thirteenth Amendment to the Constitution of Bangladesh, enacted in March 1996, established the Non-Party Caretaker Government (NPCG) system through the insertion of a new Chapter IIA into Part IV of the Constitution. This amendment was the product of a remarkable moment of political consensus in Bangladesh, supported by the BNP government that enacted it, demanded by the Awami League that had boycotted the earlier elections, and accepted by virtually all significant political actors as a necessary safeguard for electoral integrity. The consensus around the amendment was itself significant, reflecting a shared diagnosis, across partisan lines, that Bangladesh's political culture was too polarized and its institutions too weak to guarantee fair elections under partisan oversight.

The constitutional architecture established by the Thirteenth Amendment was elegantly simple in its structural logic, even if the implementation proved enormously complicated. When the National Parliament completed its term or was dissolved, the last government of Parliament would transfer power to a Non-Party Caretaker Government. This caretaker government would hold office for a maximum of ninety days, during which it would oversee the general elections and then transfer power to the newly elected government.

The critical innovation was the provision for the Chief Adviser of the caretaker government. According to the amendment, the first choice for Chief Adviser was the most recently retired Chief Justice of Bangladesh. If that person was unavailable or unwilling, the position would go to the next most recently retired Chief Justice. If no retired Chief Justice was available or willing, the position would go to the most retired retired Chief Justice. If no retired Chief Justice could be found or all were unwilling, the President would consult the leaders of major political parties to determine who should serve as Chief Adviser. The Chief Adviser would then appoint the other Advisers of the caretaker government, who were to be persons who were not active political party members and who could perform their functions without the involvement of partisan politics.

This system of automatic succession through the retired judiciary was designed to ensure the political neutrality of the Chief Adviser without requiring political negotiation over the appointment. The choice of a retired Chief Justice as the default Chief Adviser reflected a widespread assumption about the relative insulation of the judiciary from partisan politics, an assumption that, as we shall see, would prove deeply problematic in practice.

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19.2 The Jurisprudential Foundations: Neutrality, Accountability, and Constitutional Structure

The Thirteenth Amendment raised fundamental jurisprudential questions that the courts and legal scholars of Bangladesh debated intensely for more than three decades, questions that remain alive and contested in the aftermath of the March 2026 Appellate Division judgment.

The most fundamental question was whether the caretaker government system was consistent with, or indeed required by, the basic structure of the Bangladesh Constitution. The doctrine of basic structure, borrowed from the Indian constitutional tradition following the landmark Kesavananda Bharati v. State of Kerala judgment of 1973, holds that certain fundamental features of a constitution are so central to its identity and purpose that they cannot be abrogated even through the formal amendment process. In Bangladesh, the basic structure doctrine was first articulated by the Appellate Division in the Anwar Hossain Chowdhury case of 1989, which struck down a constitutional amendment that would have established separate judicial systems for different regions of the country.

The question of whether free and fair elections, and by extension the institutional mechanisms necessary to ensure such elections, formed part of the basic structure of the Bangladesh Constitution was debated extensively in the legal scholarship of the 1990s and 2000s. Those who argued that the caretaker system was constitutionally required maintained that democracy, as one of the four fundamental state principles enshrined in the Constitution, must be understood as requiring not merely formal democratic procedures but the substantive conditions necessary for those procedures to produce genuine democratic outcomes. If the incumbent government's control of state machinery systematically biased electoral competition in its favor, then the formal democratic process was hollow. The caretaker system, on this view, was not merely a politically convenient arrangement but a constitutional necessity.

Those who argued against this position maintained that the Constitution was fully democratic without the caretaker system, that parliamentary democracies around the world conducted elections under incumbent governments without those elections necessarily being unfair, and that the specific provisions establishing the caretaker government were ordinary constitutional amendments that could be modified or repealed by subsequent amendments. The question was not whether free elections were constitutionally required (they clearly were) but whether the specific institutional mechanism of the caretaker government was the only constitutional way to achieve them.

This debate acquired enormous practical significance when, in the Eighth Amendment case and later in a series of High Court challenges, the validity of various constitutional amendments was contested. The theoretical framework within which these challenges were evaluated drew heavily on comparative constitutional jurisprudence, particularly the Indian basic structure doctrine and the German concept of constitutional eternity clauses, which protect certain constitutional provisions from amendment even by supermajority procedures.

The German Basic Law, adopted in 1949, contains in its Article 79(3) an explicit list of provisions that cannot be amended under any circumstances, including the principles of human

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dignity, the federal structure, and certain fundamental rights. The Indian Supreme Court, in the absence of such an explicit provision, constructed the basic structure doctrine through judicial reasoning, identifying through a series of cases the features of the Indian Constitution that were so fundamental to its identity that they were implicitly beyond the reach of amendment. The Bangladesh Supreme Court, drawing on both of these traditions, developed its own version of the basic structure doctrine, though its application has been inconsistent and contested throughout Bangladesh's constitutional history.

The March 2026 full judgment of the Appellate Division, which restored the caretaker government system and branded the 2011 verdict that had struck it down as constitutionally defective, explicitly invoked the basic structure doctrine in support of its reasoning. The court characterized the caretaker system as integral to the constitutional guarantee of free and fair elections, which it treated as a fundamental component of the democratic structure that the basic structure doctrine protects from amendment. This characterization was the culmination of a jurisprudential argument that had been developing in Bangladesh's legal scholarship and judicial reasoning over many decades, but it was expressed with a directness and confidence that earlier judgments had not managed.

The philosophical foundations of this reasoning deserve examination. The claim that certain constitutional features are beyond amendment even through formally valid amendment procedures rests on a distinction between the constituent power, the power of "the people" to constitute and reconstitute the basic framework of government, and the constituted powers, including the legislative power that can amend the constitution within limits set by the constituent act. On this view, when a constitution is adopted, it represents an exercise of the sovereign constituent power of the people to establish a framework of government that embodies their fundamental commitments. The amendment power granted by the constitution is a power delegated to the constituted legislature to make adjustments within that framework, not a power to destroy the framework itself.

This distinction, developed most fully in the work of the German constitutional theorist Carl Schmitt and refined by later scholars including Sieyès, Ackerman, and Colón-Ríos, provides the philosophical foundation for the basic structure doctrine. It argues that there is a qualitative difference between constitutional amendment, which adjusts the details of the constitutional framework, and constitutional revolution, which replaces one fundamental framework with another. The constituent power can authorize the latter; the amendment power cannot.

Applied to the caretaker government controversy in Bangladesh, this framework suggests that the question is not simply whether the Parliament had the formal authority to delete the caretaker provisions (which it clearly did, subject to the proper amendment procedures) but whether doing so constituted an amendment to the constitutional framework or a revolution against its fundamental democratic commitments. The Appellate Division in its March 2026 judgment clearly took the latter view, characterizing the abolition of the caretaker system as a subversion of the democratic basic structure rather than a legitimate constitutional amendment.

19.3 The Thirteenth Amendment in Practice: The 1996, 2001, and 2006 Elections

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The practical operation of the Thirteenth Amendment system in the elections of 1996, 2001, and 2006 provides the empirical context within which the constitutional debates about the caretaker system must be evaluated. These three electoral cycles demonstrated both the system's genuine achievements and the vulnerabilities that would eventually lead to its collapse.

The June 1996 elections, conducted under the caretaker government headed by former Chief Justice Muhammad Habibur Rahman, were a significant success. They were widely praised as free and fair by domestic and international observers, they produced a credible victory for the Awami League, and they resulted in a peaceful transfer of power from the caretaker government to the new government of Sheikh Hasina. The elections demonstrated that the caretaker system could work as intended, providing the neutral oversight that transformed elections from exercises in incumbent manipulation into genuine popular consultations.

The 2001 elections, conducted under the caretaker government headed by Justice Latifur Rahman, were similarly successful in their management of the voting process itself, though they were accompanied by serious post-election violence against minority communities. The elections produced a decisive victory for the BNP-led alliance and resulted in the election of Khaleda Zia as Prime Minister. The caretaker system again demonstrated its capacity to oversee a transfer of power from the Awami League to the BNP, a test that many had feared would be the hardest one for the system to pass.

By 2006, however, the caretaker system was showing serious signs of stress. The fundamental problem was that the choice of Chief Justice had become a deeply political matter, because everyone understood that the most recently retired Chief Justice would automatically become the Chief Adviser of the caretaker government. This meant that the appointment of judges to the Supreme Court's Appellate Division, and especially the sequence in which judges reached the age of retirement, had enormous political implications for who would end up leading the caretaker government.

The crisis of October 2006 developed precisely through this mechanism. The BNP government of Khaleda Zia had, during its five-year tenure, been accused of manipulating judicial appointments to ensure that judges aligned with its interests would occupy the Chief Justice position. The Awami League and its allies charged specifically that the government had extended the retirement age of judges through a constitutional amendment specifically designed to ensure that a particular judge, Justice K.M. Hasan, who was associated with the BNP, would be the most recently retired Chief Justice when the government's term expired and thus would automatically become the Chief Adviser.

Whether or not this specific allegation was accurate, the perception that the caretaker system had been manipulated was widespread and deeply damaging. The Awami League announced that it would not participate in elections under the caretaker government headed by Justice Iajuddin Ahmed, the President of Bangladesh who assumed the Chief Adviser role when the standard succession mechanism failed to produce an acceptable candidate. Mass protests, political violence, and the breakdown of normal governance followed, creating the crisis conditions that led to the military-backed intervention of January 2007.

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This history of the caretaker system's practical operation establishes the context within which Fakhruddin Ahmed's appointment and the legal architecture of his government must be understood. The system had not failed because it was inherently defective; it had failed because it had been manipulated by partisan actors who understood its workings well enough to exploit its vulnerabilities. The task of the Fakhruddin government was not merely to hold elections but to restore confidence in the system itself, which required identifying and addressing the specific vulnerabilities that had been exploited.

19.4 The Constitutional Status of the Fakhruddin Government: Legality and Legitimacy Contested

The constitutional status of the caretaker government that took office on 12 January 2007 under Fakhruddin Ahmed was, from the outset, deeply contested. The government claimed constitutional legitimacy under the caretaker provisions of the Thirteenth Amendment, but this claim was challenged on multiple grounds that raised fundamental questions about the relationship between formal constitutional procedure and substantive constitutional authority.

The first challenge related to the manner in which the government came into being. The standard succession mechanism under the Thirteenth Amendment had not produced an acceptable caretaker government; instead, the President Iajuddin Ahmed had first assumed the Chief Adviser role himself (which was constitutionally possible but politically unacceptable to the Awami League), declared a state of emergency, and then resigned as Chief Adviser while retaining the Presidency, paving the way for Fakhruddin Ahmed's appointment. This sequence of events was procedurally tortured, and legal scholars debated whether it satisfied the formal requirements of the Thirteenth Amendment.

The second and more fundamental challenge related to the emergency declaration. When President Iajuddin Ahmed declared a state of emergency under Article 141A of the Constitution on 11 January 2007, he fundamentally altered the legal landscape within which the caretaker government would operate. The emergency declaration gave the government powers far beyond those of an ordinary caretaker government: the power to issue ordinances that modified or suspended statutory law, the power to detain persons without the full procedural protections of ordinary criminal law, and the power to restrict fundamental rights to a degree not permissible under normal constitutional conditions.

This transformation from a constitutionally limited caretaker government to an emergency-empowered government was the central legal reality of the Fakhruddin period, and it is the source of most of the legal controversy that surrounded that period. The question was not merely whether the government had constitutional authority to hold elections (it clearly did, under the Thirteenth Amendment) but whether it had constitutional authority to engage in the broader governance and reform agenda that it actually pursued, an agenda that went far beyond the election-oversight mandate that the caretaker provisions contemplated.

The jurisprudential tradition offers several frameworks for evaluating this question. The positivist tradition, associated with John Austin and H.L.A. Hart, would focus on the formal legal validity of the government's actions: were they authorized by duly enacted legal

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instruments that could trace their authority back to the constitutional text? The natural law tradition, in its various forms, would ask whether the government's actions were consistent with fundamental principles of justice and human rights that transcend positive law. The Dworkinian tradition would ask whether the government's actions could be justified by principles that cohered with the best interpretation of the entire legal and constitutional order. And the political legitimacy tradition, drawing on the social contract theorists from Locke through Rawls, would ask whether the government enjoyed the kind of popular acceptance and normative justification that makes the exercise of governmental power not merely legally valid but politically legitimate.

None of these frameworks, applied honestly to the Fakhruddin government, yielded simple or unambiguous conclusions. The government's formal legal authority was complicated but arguable. Its substantive record was mixed, combining genuine institutional reforms with significant human rights violations. Its popular legitimacy, while never formally tested, was suggested by the relative absence of organized resistance during most of its tenure and by the strong electoral performance of the Awami League in the December 2008 elections, which the government had been created to enable.

The ongoing debate about the constitutional status of the Fakhruddin government, which was taken up afresh by the Supreme Court in its November 2025 and March 2026 judgments, reflects the deeper truth that constitutional legitimacy is not a binary quality that governments either possess or lack but a complex, multidimensional property that involves formal legal authority, substantive policy justification, and political acceptance in ways that are not always easily separated or compared.

CHAPTER TWENTY: THE EMERGENCY POWERS REGIME: LEGAL ARCHITECTURE, CONSTITUTIONAL FOUNDATIONS, AND COMPARATIVE PERSPECTIVES

20.1 Emergency Powers in Constitutional Theory: The State of Exception

The declaration of a state of emergency by President Iajuddin Ahmed on 11 January 2007 introduced Bangladesh into what the German philosopher and legal theorist Carl Schmitt called "the state of exception," that paradoxical situation in which the legal order suspends its own normal rules in order to preserve itself. Schmitt's famous dictum that "sovereign is he who decides on the exception" captures the fundamental truth about emergency powers: they represent the most naked exercise of sovereign authority, unmediated by the procedural constraints that normally govern governmental action, and their legitimacy depends ultimately on the quality of the judgment that determines when an exception is truly necessary.

Schmitt's analysis of the exception has been enormously influential but also deeply controversial, and understanding both its insights and its limits is essential for evaluating the emergency powers regime that governed the Fakhruddin period. Schmitt argued that all legal orders have at their foundation a decision that precedes law itself, a founding political act of will that establishes the basic framework within which legal norms operate. The state of exception reveals

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this foundation by suspending the normal legal order and exposing the sovereign political will that underlies it. For Schmitt, this was not a defect in constitutional systems but their deepest truth.

The liberal constitutional tradition has engaged with Schmitt's challenge in various ways, seeking to tame the state of exception by bringing it within legal constraints, by insisting that emergency powers must be authorized by constitutional provision, limited in scope and duration, subject to judicial review, and exercised in good faith toward their stated purpose. The American constitutional tradition grappled with this problem during the Civil War, when Lincoln's suspension of habeas corpus raised fundamental questions about the limits of emergency executive power that have never been fully resolved. The German Basic Law, drafted in direct response to the Weimar experience, where emergency powers were used to dismantle democracy itself, included elaborate provisions for emergency governance that attempted to prevent a repetition of that disaster.

The Bangladesh Constitution's emergency provisions, found in Part IX (Articles 141A to 141C), were inherited partly from the Government of India Act 1935 and the Pakistani constitutional tradition, and they reflect a relatively conventional post-colonial constitutional approach to emergency powers. Article 141A permits the President to proclaim an emergency if he is satisfied that a grave emergency exists whereby the security or economic life of Bangladesh is threatened. The proclamation must be approved by Parliament within thirty days unless Parliament is dissolved, in which case it must be approved by the next Parliament within thirty days of its first sitting. During a state of emergency, the President may by order modify or suspend the application of any provision of the Constitution relating to fundamental rights, with the exception of Article 32 (which protects the right to life and personal liberty) and Article 35 (which prohibits double jeopardy and torture).

This constitutional framework was supplemented, during the Fakhruddin period, by a series of Emergency Powers Regulations that significantly expanded the government's practical authority. The Emergency Powers Rules, 2007, issued under the Emergency Powers Act, gave the government broad powers to detain persons without trial, to search and seize property without normal procedural protections, and to restrict movement, assembly, and publication. These powers were used extensively during the anti-corruption campaign, raising fundamental questions about the constitutional permissibility of their application.

20.2 The Emergency Powers Ordinances: Legislative Activity Under Emergency Conditions

One of the most significant and legally consequential features of the Fakhruddin period was the extraordinary volume of ordinance-making activity through which the government exercised its legislative powers in the absence of a functioning Parliament. Between January 2007 and December 2008, the caretaker government issued more than 133 ordinances covering an enormous range of subjects, from anti-corruption legislation to judicial reform to electoral law to commercial regulation.

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The ordinance-making power of the government derived from Article 93 of the Bangladesh Constitution, which permits the President to promulgate ordinances when Parliament is not in session and the President is satisfied that circumstances exist that render immediate action necessary. During the caretaker period, Parliament was dissolved (having completed its term before the formation of the caretaker government), so the ordinance-making power was the government's primary legislative instrument.

The volume and scope of the ordinances issued during the Fakhruddin period went far beyond anything that the constitutional provisions for caretaker government had contemplated. The Thirteenth Amendment's provisions for non-party caretaker government contemplated a government whose primary function was to oversee elections, not to engage in comprehensive legislative reform. Critics of the Fakhruddin government's ordinance-making activity argued that by using its legislative powers to enact far-reaching reforms, the government was exceeding its constitutional mandate and usurping functions that properly belonged to an elected Parliament.

Defenders of the government's approach argued that the emergency powers authorized by Article 141A, in conjunction with the ordinance-making power under Article 93, gave the government sufficient constitutional authority for its legislative activities, and that the extraordinary circumstances of Bangladesh's governance crisis justified extraordinary legislative action. They pointed to the fact that many of the ordinances addressed genuine governance failures, particularly in the areas of anti-corruption and judicial independence, that had been obvious for years but that elected governments had been unable or unwilling to address.

This debate about the constitutional permissibility of the caretaker government's legislative activities connects to broader theoretical questions about the proper scope of emergency powers. One influential framework, developed by the constitutional theorist Bruce Ackerman, distinguishes between "emergency" emergency powers, which are temporary, targeted, and aimed at addressing specific threats, and "normalization" emergency powers, which gradually expand the scope of emergency governance until the extraordinary becomes ordinary. Ackerman argues that constitutional systems must be designed to prevent the normalization of emergency powers, because normalization destroys the distinction between emergency and ordinary governance that gives emergency powers their legitimacy.

The Fakhruddin government's legislative record presents a mixed picture from this perspective. On one hand, the government explicitly characterized itself as temporary and committed to transferring power to an elected government, and it largely fulfilled this commitment. On the other hand, its legislative agenda extended well beyond the emergency conditions that justified its existence, touching not merely the immediate governance crisis but the long-term institutional architecture of the Bangladeshi state. Whether this extended legislative agenda represented an appropriate response to Bangladesh's deep governance crisis or an illegitimate encroachment on the functions of elected government is a question that admits of multiple reasonable answers, depending on which aspects of the constitutional and philosophical tradition one finds most compelling.

The question has acquired renewed urgency in 2025 and 2026, as the new Parliament elected in February 2026 has confronted the task of reviewing the 133 ordinances issued by the Fakhruddin

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government, deciding which to confirm, modify, or repeal, and thereby determining the permanent legacy of the caretaker period's legislative activity. The process of this review has itself been constitutionally controversial, raising questions about the proper relationship between the interim government's unelected legislative authority and the elected Parliament's democratic mandate.

20.3 The Emergency Powers Regulations: Detention, Search, and the Suspension of Ordinary Rights

The most practically significant and constitutionally controversial aspect of the emergency powers regime was its application to the detention of individuals and the restriction of civil liberties. The Emergency Powers Rules, 2007, gave the authorities sweeping powers that went well beyond what the ordinary criminal law permitted, and their application during the anti-corruption campaign generated extensive legal challenge and international criticism.

The detention provisions of the Emergency Powers Rules permitted authorities to detain any person without the filing of formal criminal charges for an initial period of up to thirty days, extendable by executive order for additional periods. The detained person had no right to seek bail from a court and had very limited access to legal counsel. Habeas corpus petitions challenging detentions under the emergency powers were generally not entertained by the courts during the period of emergency, on the grounds that the constitutional protections that would normally authorize judicial review of detention had been suspended.

This suspension of habeas corpus and related judicial protections raised fundamental questions about the limits of emergency powers in Bangladesh's constitutional system. The constitutional text provides that during a state of emergency, the President may suspend the application of fundamental rights provisions, but expressly excepted from this power are Articles 32 and 35, which protect the right to life and personal liberty and prohibit arbitrary detention. Critics argued that the practical effect of the emergency detention rules was to undermine these protected rights even if their formal text was not suspended.

The theoretical framework for evaluating these claims draws on what philosophers of law call the distinction between the suspension of a right and the infringement of a right. To suspend a right is to temporarily remove its legal protections, which may be permissible in genuine emergencies if properly authorized and limited. To infringe a right is to act in a way that violates the underlying interest the right is designed to protect, which may be impermissible even during emergencies if the constitutional text explicitly protects certain rights against even emergency suspension. The claim of the Fakhruddin government's critics was that its detention practices, by holding people for extended periods without charge and without meaningful access to judicial review, were infringing the rights protected by Articles 32 and 35 even if they did not formally suspend those articles.

This argument has a distinguished pedigree in international human rights law. The International Covenant on Civil and Political Rights, to which Bangladesh is a party, permits derogation from most civil and political rights in times of public emergency but explicitly excludes from derogation the right to life, the prohibition of torture, the prohibition of slavery, and certain due

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process protections. The Human Rights Committee, which monitors compliance with the Covenant, has consistently interpreted these non-derogable provisions broadly, holding that states cannot circumvent their obligations by formally characterizing their derogation as relating only to non-excluded rights while in practice undermining the protected rights through related measures.

Bangladesh's international human rights obligations were a significant dimension of the legal debate about the emergency powers regime, and they connected the specific legal questions of the Fakhruddin period to the broader framework of international constitutional law that has developed since the adoption of the Universal Declaration of Human Rights in 1948. The international human rights framework imposes constraints on emergency powers that go beyond what any particular national constitution provides, establishing a floor of protection below which even emergency governance cannot descend.

20.4 The Judiciary During the Emergency: Institutional Response and Constitutional Tension

The response of Bangladesh's judiciary to the emergency powers regime was complex and, in some respects, contradictory. On one hand, the courts generally declined to entertain habeas corpus petitions challenging emergency detentions, effectively acquiescing in the government's claim that the emergency declaration removed the ordinary constitutional protections for detained persons. On the other hand, the courts continued to function and in some cases issued judgments that constrained aspects of the government's conduct.

The acquiescence of the courts in emergency detentions reflects a pattern that is familiar across many constitutional systems. Courts in parliamentary democracies have generally been reluctant to challenge emergency powers claimed by the executive on grounds of national security or public order, partly because of institutional limitations (courts cannot effectively manage complex security situations) and partly because of a recognition that in genuine emergencies, executive flexibility is necessary. This judicial deference to executive emergency powers is not, of course, unlimited; courts have been more willing to challenge emergency powers as the emergency recedes or as the specific measures taken appear disproportionate to the threat.

In Bangladesh's specific context, the judiciary's response to the emergency was shaped by its own institutional situation. The courts had long operated under conditions of executive influence and political pressure, and their capacity for genuinely independent constitutional review was limited. The judicial separation that was one of the Fakhruddin government's most significant institutional reforms, formally separating the lower judiciary from the executive's control, was itself a recognition of how severely compromised judicial independence had become under the electoral politics system.

The theoretical framework most relevant to evaluating judicial behavior during emergencies is what political scientists call "strategic" judicial behavior, the idea that courts make institutional calculations about the likely consequences of their decisions and calibrate their aggressiveness accordingly. Courts that operate in environments of political instability or institutional weakness will tend to be more deferential to executive power than courts in stable democracies with strong

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institutional foundations, not necessarily because their judges believe executive power is unlimited but because they recognize that confrontational judgments that cannot be enforced will damage the court's institutional credibility without protecting the rights at stake.

This analysis suggests that the Bangladesh courts' relative acquiescence in the emergency powers regime may have reflected not judicial approval of those powers but a prudential calculation about the limits of judicial intervention in a context of political crisis. Whether this calculation was correct, whether more aggressive judicial intervention would have effectively constrained the government's excesses or merely provoked a confrontation that damaged the judiciary without benefit, is a question that cannot be answered with certainty but that deserves serious analytical attention.

CHAPTER TWENTY-ONE: THE ANTI-CORRUPTION LEGAL FRAMEWORK: THE ANTI-CORRUPTION COMMISSION, SPECIAL COURTS, AND THE POLITICS OF LEGAL ACCOUNTABILITY

21.1 The Historical Background: Corruption as Constitutional Crisis

To understand the legal framework of the Fakhruddin government's anti-corruption campaign, it is necessary to understand the historical depth and systemic character of corruption in Bangladesh's governance, and the ways in which corruption had become, by 2007, not merely a problem of dishonest officials but a structural feature of the entire political system.

Bangladesh had consistently ranked among the most corrupt countries in the world in Transparency International's Corruption Perceptions Index throughout the 1990s and early 2000s. In 2001, it ranked as the most corrupt country in the world, and it remained in the top few most corrupt countries in subsequent years. This ranking was not merely a product of perceptions or measurement methodology; it reflected a genuine and deep reality about how governance worked in Bangladesh, how political parties financed themselves, how businessmen obtained licenses and contracts, how citizens navigated interactions with the state, and how the police, judiciary, and civil service actually functioned.

The systemic character of corruption in Bangladesh can be understood through several analytical frameworks. The political economy framework treats corruption as the product of incentive structures that make corruption rational for the individuals who engage in it. When legitimate income from public office is low, when the probability of detection and punishment is minimal, and when the gains from corruption are large, rational agents will engage in corruption regardless of their personal moral commitments. This analysis points to the importance of civil service salaries, administrative accountability mechanisms, and the effectiveness of anti-corruption enforcement in determining corruption levels.

The institutional framework treats corruption as a symptom of weak institutions, specifically the absence of effective accountability mechanisms, clear and enforced rules, and genuine independence of oversight bodies from the executive. In Bangladesh, the institutional analysis

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pointed to the complete subordination of the Anti-Corruption Bureau (ACB), which was the primary anti-corruption body before the Fakhruddin period, to the executive and particularly to the ruling political party. The ACB had no operational independence, its investigations were routinely blocked when politically connected individuals were involved, and its prosecutorial capacity was minimal. The bureau was, in the assessment of virtually every serious analyst, a tool for selective prosecution of political opponents rather than a genuine anti-corruption institution.

The political economy of corruption in Bangladesh was also deeply connected to the financing of political parties. Both major parties, the Awami League and the BNP, relied heavily on networks of businessmen and contractors who provided campaign financing in exchange for preferential treatment in government contracting, licensing, and regulatory decisions. These patronage networks were not incidental to the political system; they were its operating logic, the mechanism through which political power was exercised and maintained. Challenging corruption meant, therefore, not merely prosecuting individual wrongdoers but attacking the financial foundations of the political system itself, a task that went well beyond what any ordinary law enforcement campaign could accomplish.

21.2 The Anti-Corruption Commission: Legal Architecture and Institutional Design

The primary legal instrument through which the Fakhruddin government pursued its anti-corruption agenda was the Anti-Corruption Commission (ACC), established under the Anti-Corruption Commission Act, 2004, which had been enacted before the caretaker period but had not been operationalized effectively under the previous governments. The Fakhruddin government reconstituted the ACC, gave it operational resources and political support, and tasked it with investigating and prosecuting the major corruption cases that had accumulated over the previous decade.

The legal architecture of the ACC as reconstituted during the Fakhruddin period represented a significant departure from the previous ACB model in several important respects. The ACC was granted statutory independence from the executive, its commissioners could not be removed except through a formal process, and it had its own investigative and prosecutorial staff rather than being dependent on the regular police and prosecutors. These structural features were designed to address the fundamental weakness of the ACB, which was its complete subordination to executive political control.

The ACC's investigative powers were substantial. It could conduct searches and seizures, compel the production of documents and testimony, and access bank records and other financial information. Its powers were further expanded during the emergency period by regulations that reduced the procedural protections available to persons under investigation, making it easier to gather evidence and harder for the subjects of investigation to impede the process.

The prosecution of corruption cases was handled through a system of special courts established under emergency regulations, which operated under procedures different from those of the ordinary criminal courts. The special courts were designed to be faster and more focused than ordinary criminal courts, with simplified procedures and limited rights of appeal. This design

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reflected a judgment that the ordinary court system was both too slow and too vulnerable to corruption and political manipulation to effectively handle high-profile anti-corruption prosecutions.

The jurisprudential theory underlying this system of special courts draws on a well-established tradition in legal thought that distinguishes between ordinary criminal justice, which is concerned with the full range of criminal behavior and is designed with elaborate procedural protections to guard against wrongful conviction, and special or administrative justice systems, which are designed to address specific categories of social harm that the ordinary system handles poorly. Special courts for tax evasion, securities fraud, terrorism, and corruption have been established in many legal systems on the grounds that the distinctive characteristics of these offenses (their complexity, the difficulty of evidence-gathering, the resources of defendants, and the likelihood of interference with the ordinary judicial process) require tailored institutional responses.

The theoretical justification for such special courts must be evaluated against the risk that they will be used for political purposes, to target opponents of the government rather than genuine wrongdoers, and that their simplified procedures will result in unfair convictions. This risk was clearly present during the Fakhruddin period, and the controversy over the anti-corruption prosecutions centered precisely on the question of whether the government was using the ACC and the special courts as instruments of genuine anti-corruption enforcement or as tools for political manipulation.

21.3 The Anti-Corruption Campaign: Notable Prosecutions and Their Jurisprudential Implications

The most politically charged and legally significant prosecutions of the Fakhruddin period were those of the major political figures: Sheikh Hasina, leader of the Awami League, and Tarique Rahman, son of BNP leader Khaleda Zia. These prosecutions tested the legal system's capacity for impartial enforcement of anti-corruption law in circumstances where the temptation to selective prosecution was obvious and where the political stakes of the outcomes were enormous.

The prosecution of Sheikh Hasina on charges of extortion arising from a business dispute, and the subsequent charges related to corruption in government contracting during her period as Prime Minister, were legally complex and politically explosive. She was arrested and detained in the aftermath of the declaration of emergency, initially placed in detention facilities at the Parliament Complex, and subjected to extensive interrogation. The charges against her were eventually pursued through the special courts system.

The legal challenges to her prosecution raised fundamental questions about the procedural fairness of the special courts system and the substantive validity of the charges. Her legal team argued, with considerable force, that the charges were politically motivated, that the evidence was manufactured or misrepresented, and that the special court procedures denied her the fair trial guarantees that the Bangladesh Constitution and international human rights standards require. These arguments were taken seriously by portions of the legal community and by

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international human rights organizations, which issued reports critical of the prosecution's procedural fairness.

The jurisprudential literature on selective prosecution, developed primarily in the American constitutional tradition but applicable to the Bangladesh context, provides analytical tools for evaluating these claims. Selective prosecution doctrine holds that while the executive has broad discretion in making prosecution decisions, that discretion cannot be exercised in ways that discriminate on the basis of race, religion, political opinion, or other constitutionally impermissible grounds. The difficulty of establishing selective prosecution claims is that it requires demonstrating not merely that the prosecutor chose to prosecute some people and not others (which is inevitable in any system with limited resources) but that the choice was made on discriminatory grounds rather than legitimate law enforcement considerations.

Applied to the Fakhruddin period prosecutions, selective prosecution claims faced the difficulty that the government did in fact prosecute prominent figures from both major parties, not merely from one. The prosecution of Tarique Rahman, alongside that of Sheikh Hasina, was a significant demonstration that the anti-corruption campaign was not purely a weapon against one political faction. At the same time, critics pointed to the relative leniency with which some politically connected individuals were treated compared to others, suggesting that the selectivity in prosecution was more nuanced than a simple partisan division.

The prosecutions also raised questions about the due process dimensions of the detention and investigation process. Extended pre-trial detention without bail, limitations on access to legal counsel, and restrictions on the ability of defendants to challenge the evidence against them were all features of the special courts system that attracted serious criticism from human rights lawyers and organizations. These procedural concerns were not merely technical complaints but reflected substantive commitments about the fairness of criminal justice processes that are embedded in both international human rights law and the Bangladesh constitutional tradition.

21.4 The Legacy of the Anti-Corruption Campaign: Institutional Reform vs. Political Theatre

The assessment of the Fakhruddin government's anti-corruption legacy requires distinguishing between its institutional achievements, the changes it made to the architecture of anti-corruption enforcement that persisted after the caretaker period, and its immediate prosecutorial outcomes, the specific cases it pursued and their eventual disposition.

The institutional legacy was, on balance, more significant and more positive than the immediate prosecutorial outcomes. The reconstituted Anti-Corruption Commission, whatever the controversies surrounding its specific investigations during the caretaker period, established itself as a more credible and operationally capable institution than its predecessor, the ACB. The ACC's statutory independence, even if imperfect in practice, represented an institutional design improvement that subsequent governments found difficult to completely reverse, though attempts were made.

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The special courts system, by contrast, was a more ambiguous institutional legacy. The courts operated efficiently in the narrow technical sense of disposing of cases quickly, but the combination of their emergency-powers origins, their simplified procedures, and the political salience of many of their cases created legitimacy problems that undermined public confidence in their outcomes. The extensive reversals and revisions of convictions obtained during the caretaker period in the years following the 2008 elections further damaged the credibility of the system.

The philosophical question underlying the assessment of the anti-corruption campaign is whether the ends of anti-corruption enforcement can justify procedural means that fall short of normal due process standards. This question has no simple answer, but the weight of both theoretical argument and empirical evidence suggests significant skepticism about anti-corruption campaigns that sacrifice procedural fairness in the name of effectiveness.

The theoretical argument against procedurally compromised anti-corruption enforcement rests on two foundations. First, procedural fairness is not merely instrumental (a means to accurate verdicts) but intrinsically valuable as an expression of respect for the dignity and rights of the accused. Criminal justice systems that treat defendants as obstacles to the detection of truth rather than as persons with rights that limit how the state may pursue truth are fundamentally unjust, regardless of whether they convict guilty people more often than fair systems do.

Second, the effectiveness argument for procedural compromise tends to undermine itself over time. Anti-corruption prosecutions that lack procedural legitimacy will not produce the norm-changing effects that successful anti-corruption enforcement can achieve. If the public perceives anti-corruption prosecutions as politically motivated or procedurally rigged, they will not draw the lesson that corruption is genuinely punished; they will draw the lesson that government power can be used selectively against political opponents. This perception, which was widespread in Bangladesh during and after the caretaker period, may actually have reinforced cynicism about the rule of law rather than strengthening respect for it.

CHAPTER TWENTY-TWO: THE BENGAL AND BANGLADESH LEGAL TRADITION: COLONIAL INHERITANCE AND POST-COLONIAL EVOLUTION

22.1 The Common Law in Bengal: Historical Foundations

To understand the legal framework within which the Fakhruddin government operated, it is necessary to engage with the distinctive character of the Bengal and Bangladesh legal tradition, a tradition formed by the intersection of the English common law imposed through colonial rule, the indigenous legal traditions of pre-colonial Bengal, and the specific post-independence developments that adapted the inherited common law system to the needs and values of an independent nation.

The English common law came to Bengal through the East India Company's establishment of the Presidency town of Calcutta in the late seventeenth century and its subsequent expansion into a

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governing power over vast territories. The Supreme Court of Judicature at Fort William, established by the Regulating Act of 1773, was the first formal institution of English law in Bengal, applying English common law to British subjects and company servants within the Presidency town. Its jurisdiction was eventually extended to a broader range of cases involving Indians, though the full application of English law to the Indian population was always contested and never fully achieved.

The legal system that emerged in Bengal under British rule was therefore never a pure transplant of English common law. It was a hybrid, combining common law principles with elements of Mughal administrative law, local customary law, and specific legislative interventions by the colonial government that modified the common law to suit Indian conditions. The Bengal Tenancy Act, the Transfer of Property Act, the Contract Act, and the Code of Civil Procedure, all enacted by the colonial legislature in the late nineteenth century, were examples of how the colonial government codified and modified the common law to address the specific legal needs of Indian society.

This process of codification was significant for the post-independence development of Bangladesh law because it meant that the inherited legal system was not the uncodified common law of England, heavily dependent on judicial discretion and accumulated precedent, but a largely codified system in which statutory texts played the primary role. The Bangladesh legal system today is thus a civil law system in the sense that statutory codes govern most areas of law, even though it operates with common law institutions (an adversarial court system, the doctrine of precedent, the central role of judicial decision-making in legal development) and employs a common law methodology (reasoning from cases as well as statutes, developing legal principles through the application of general rules to specific facts).

This hybrid character of the Bangladesh legal tradition is important for understanding the specific legal questions that arose during the Fakhruddin period. The constitutional law questions about emergency powers, caretaker government, and the limits of ordinance-making authority were addressed through a combination of textual analysis of the constitutional provisions, reasoning from the precedents established by earlier court decisions, and the application of general constitutional principles derived from the broader common law constitutional tradition. The anti-corruption law questions about the powers of the ACC, the procedures of the special courts, and the constitutional rights of accused persons were addressed through a similar combination of statutory interpretation, case law reasoning, and constitutional principle.

22.2 The Constitutional History of Bengal: From Dyarchy to Independence

The constitutional history of Bengal under British rule is a history of gradually expanding representative institutions constrained by colonial authority, of demands for greater autonomy resisted and eventually granted too late to preserve the unity of the subcontinent, and of the particular Bengali experience of constitutional politics that shaped the specific values and expectations that Bangladeshis brought to the construction of their post-independence constitutional order.

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The Morley-Minto reforms of 1909 introduced a limited form of representative government in India, establishing elected councils with Indian majorities in some provinces but giving them only advisory powers on legislation and none at all on executive actions. The Montagu-Chelmsford reforms of 1919, embodied in the Government of India Act 1919, went further, establishing the system known as dyarchy, in which certain "transferred" subjects (such as education, agriculture, and public health) were placed under the responsibility of ministers drawn from the elected legislature, while "reserved" subjects (such as law and order, finance, and the administration of justice) remained under the exclusive control of appointed British officials.

The dyarchy system was widely criticized as an unsatisfactory halfway house that combined the burdens of representative government without its benefits. The provinces had responsibility for popular services without the fiscal resources to provide them adequately, and the reserved subjects, controlled by officials accountable only to the governor and ultimately to London, continued to operate in ways that prioritized British interests over Indian needs. In Bengal, the dyarchy experience was particularly frustrating because it demonstrated the possibilities of representative government while simultaneously revealing the constraints that colonial rule imposed on its exercise.

The Government of India Act 1935, the last major constitutional reform before independence, established a more fully representative system with provincial autonomy in the hands of elected governments responsible to elected legislatures. In Bengal, this led to the elections of 1937, which brought A.K. Fazlul Haq's Krishak Praja Party (Peasants' and Workers' Party) to power in coalition with the Muslim League. The 1937 elections introduced a generation of Bengali politicians to the experience of responsible government, with all the challenges and temptations that entails.

The 1946 elections, held under the same 1935 framework, were a decisive watershed in Bengal's constitutional history. The Muslim League's overwhelming victory in the Muslim seats in Bengal effectively determined the province's destiny in the coming partition. The elections demonstrated the depth of Muslim political solidarity in Bengal, but they also revealed the extent to which religious identity had come to overshadow class, regional, and cultural identities in the political mobilization of Bengal's Muslim majority.

The partition of Bengal in 1947 and the creation of East Bengal as the eastern wing of Pakistan established a constitutional framework that was, from the outset, deeply problematic. The Government of India Act 1935 continued to serve as the constitutional instrument for the new Pakistani state until the adoption of Pakistan's first constitution in 1956, a period during which the legal system in East Bengal continued to operate substantially as it had under the British. The inherited colonial legal institutions, including the courts, the civil service, and the legislative procedures, provided a degree of institutional continuity even as the political framework changed dramatically.

22.3 Post-Independence Legal Development: The Bangladesh Legal Order

The legal order that Bangladesh inherited on its independence in December 1971 was substantially the legal order of Pakistan, which was itself substantially the legal order of British

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India. The newly independent state faced the enormous challenge of constructing a functioning legal system, staffing and resourcing its courts, and developing the constitutional jurisprudence appropriate to its new status as a sovereign state, all in the context of the devastation of the Liberation War and the massive economic and social disruption that accompanied it.

The Constitution of Bangladesh, adopted in December 1972, established the basic framework of the new legal order. Article 7 declared the Constitution to be the supreme law of Bangladesh, establishing the principle of constitutional supremacy under which all other laws must conform to the constitutional text. Article 26 provided that all existing laws inconsistent with the provisions of Part III (the fundamental rights provisions) were void to the extent of the inconsistency, and that the state could not make any law inconsistent with those provisions. These provisions established a system of judicial review under which courts could strike down legislation that violated constitutional rights.

The constitutional text also established the institutional framework for the legal order: a Supreme Court with a High Court Division and an Appellate Division, a Attorney General as the chief law officer of the state, a system of lower courts, and the basic procedural rights of accused persons and civil litigants. This framework drew extensively on the inherited common law tradition, particularly on the English and Pakistani constitutional conventions that governed the relationship between courts, Parliament, and the executive.

The subsequent development of Bangladesh's legal order has been shaped by the interplay of three major forces: the inherited common law tradition, which provides the institutional and methodological framework for legal reasoning; the specific constitutional provisions and their interpretation by the courts, which establish the boundaries of permissible governmental action; and the political context, which has often exerted pressure on both the constitutional text (through amendments) and the courts (through various forms of political influence on judicial appointments and decisions).

The Bangladesh legal tradition has, over the course of the post-independence period, developed a substantial body of constitutional jurisprudence that addresses many of the fundamental questions that arose during the Fakhruddin period. The Anwar Hossain Chowdhury case on constitutional amendments, the Masdar Hossain case on judicial independence, and numerous habeas corpus decisions addressing the detention of political prisoners have all contributed to a body of constitutional doctrine that, while never fully systematic or coherent, provides the materials for principled analysis of the legal questions that the caretaker period raised.

22.4 The Masdar Hossain Case and Judicial Separation: Legal Precedent for the Fakhruddin Reform

One of the most significant legal reforms of the Fakhruddin period was the formal separation of the lower judiciary from the executive, implementing a Supreme Court directive that had been outstanding for more than a decade. To understand this reform and its significance, it is necessary to engage with the Masdar Hossain case, formally known as Bangladesh v. Masdar Hossain and Others, in which the Supreme Court directed the separation of the judiciary.

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The case arose from a petition filed by a group of judicial officers who argued that the executive's control over judicial service, including the power to appoint, promote, transfer, and discipline judges of the lower courts, was incompatible with the constitutional guarantee of judicial independence. The petitioners argued that the subordinate courts could not be genuinely independent in their adjudicative functions while their personnel were subject to executive control through the President's Secretariat rather than through the Supreme Court.

The Appellate Division's landmark judgment in the Masdar Hossain case, delivered in December 1999, held in favor of the petitioners and directed the government to separate the lower judiciary from the executive by implementing twelve specific directives. The directives included requiring that the service conditions and discipline of judicial officers be governed by rules framed by the President on the advice of the Supreme Court rather than by the Ministry of Establishment; that judicial officers be housed and transported separately from executive officers; that the pay scales of judicial officers be enhanced to appropriate levels; and that all matters relating to judicial service be processed through the Supreme Court rather than through the executive.

Despite the clarity and authority of the Supreme Court's directives, successive governments failed to implement them over the following eight years. The BNP government under Khaleda Zia, which was in power when the judgment was delivered, failed to act. The Awami League government that followed also failed to implement the directives. The BNP government that returned to power in 2001 likewise failed to act. By the time the caretaker government of Fakhruddin Ahmed took office in January 2007, the Supreme Court's directives in the Masdar Hossain case were eight years old and still unimplemented.

The Fakhruddin government's decision to implement the Masdar Hossain directives was one of its most constitutionally significant acts. The implementation, carried out through a series of ordinances and administrative orders, transferred control over the lower judiciary from the executive to the Supreme Court, established separate administrative structures for the judicial service, and began the process of rationalizing judicial salaries and working conditions. The implementation was not perfect, and significant challenges remained, but it represented a fundamental change in the institutional architecture of Bangladesh's legal system.

The jurisprudential significance of the judicial separation reform extends beyond its immediate institutional impact. By implementing the Supreme Court's directives, the Fakhruddin government was acknowledging and reinforcing the authority of constitutional adjudication over executive practice, demonstrating that governmental commitments imposed by court order could and should be honored even when they required significant institutional reorganization and resource commitment. This demonstration had important implications for the broader question of judicial independence in Bangladesh, which depended not merely on formal constitutional guarantees but on the practical willingness of governments to respect and implement judicial directives.

The theoretical framework most relevant to evaluating this reform is the separation of powers doctrine, one of the foundational principles of liberal constitutionalism. The separation of powers doctrine holds that governmental authority should be divided among distinct institutions, typically designated as legislative, executive, and judicial, with each institution exercising one

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type of authority and no single institution accumulating all three types. The doctrine's underlying rationale is the prevention of tyranny through the mutual checking of separate institutions, each with its own sphere of authority, its own institutional interests, and its own perspective on the proper exercise of governmental power.

Judicial independence is typically understood as a specific application of the separation of powers principle to the relationship between the judiciary and the other branches of government. The judiciary cannot perform its constitutional function of checking the legality and constitutionality of executive and legislative action if it is institutionally subordinate to those branches. An executive that controls judicial appointments, promotions, transfers, and discipline can effectively neutralize judicial oversight of its own conduct by ensuring that cooperative judges receive preferential treatment while independent judges face professional sanctions.

The Masdar Hossain case and the Fakhruddin government's implementation of its directives are therefore significant not merely as episodes in Bangladesh's institutional history but as illustrations of the fundamental logic of the separation of powers doctrine and the conditions necessary for its practical realization.

CHAPTER TWENTY-THREE: COMPARATIVE CONSTITUTIONAL LAW AND TRANSITIONAL JUSTICE: INTERNATIONAL PERSPECTIVES ON THE CARETAKER PERIOD

23.1 Comparative Constitutional Frameworks for Caretaker Governance

The institution of the non-party caretaker government that Bangladesh created through the Thirteenth Amendment is distinctive in comparative constitutional terms. While many countries use caretaker or interim governments in certain circumstances, particularly after an election is called and before a new government is formed, the Bangladeshi model of a full-scale non-partisan government with broad executive powers to oversee the electoral process is relatively unusual in the world of parliamentary democracies.

The most closely analogous institution in comparative constitutional practice is the concept of "transitional government" or "government of national unity" that has been used in various countries emerging from periods of political crisis or conflict. These arrangements share the basic logic of the Bangladeshi caretaker system: they create a temporary governmental arrangement that is deliberately insulated from partisan competition, with the specific mission of overseeing a transition to normal democratic governance. The differences lie in the specific institutional design choices, the constitutional basis for the arrangement, and the historical and political contexts in which they have operated.

South Asia provides the most directly relevant comparative material. Pakistan, Sri Lanka, and India have all grappled with variants of the question that Bangladesh addressed through the Thirteenth Amendment: how to conduct elections in contexts where the incumbent government's

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control of state resources and administrative machinery creates a systematic bias in favor of the ruling party.

Pakistan, despite sharing Bangladesh's colonial legal heritage and its experience of military intervention in democratic governance, took a different approach. The Pakistani Constitution does not contain a formal caretaker government system analogous to Bangladesh's Thirteenth Amendment. Instead, Pakistan relies on a combination of constitutional provisions requiring the conduct of elections within specified timeframes after the dissolution of Parliament, the Election Commission's formal independence, and informal political agreements about the management of caretaker arrangements. The Pakistani experience of elections under these arrangements has been mixed, with some elections widely praised as credible and others sharply criticized.

India, the constitutional parent of many of Bangladesh's institutions, similarly lacks a formal caretaker government system. The Indian approach relies on the Election Commission of India, which is granted substantial constitutional independence and which has, over time, developed extensive authority to direct the government's conduct during election campaigns, including the power to transfer officials who are perceived as politically partisan and to enforce a "model code of conduct" that restrains government actions that might advantage the incumbent party.

The Indian Election Commission model is, in important respects, the alternative to the Bangladeshi caretaker model as an institutional mechanism for ensuring electoral fairness under incumbent governments. Rather than removing the government entirely and replacing it with a non-partisan caretaker, the Indian model keeps the elected government in place but subjects it to intensive monitoring and regulation by an independent constitutional body. The comparative evaluation of these two models involves complex trade-offs between the depth of electoral neutrality achieved (which is probably greater under the caretaker model) and the institutional disruption and democratic deficit involved in removing elected governments from power during electoral periods (which is less severe under the Election Commission model).

23.2 Transitional Justice and the Anti-Corruption Campaign: International Comparisons

The anti-corruption campaign of the Fakhruddin period connects to a broader international literature on transitional justice, which examines how societies emerging from periods of authoritarian rule, conflict, or systematic governance failure deal with the crimes and injustices of the past. The transitional justice literature has developed over several decades of comparative study of cases from Latin America, Africa, Eastern Europe, and South Africa, and it provides important analytical resources for evaluating the Fakhruddin government's approach.

Transitional justice mechanisms typically fall into several categories: criminal prosecutions of those responsible for past crimes, truth commissions that document and acknowledge past violations without criminal punishment, reparations programs that compensate victims, and institutional reforms that address the structural conditions that enabled past violations. The Fakhruddin government's anti-corruption campaign most closely resembles the criminal prosecution model, pursuing accountability through the regular (if modified) criminal justice system rather than through specially designed transitional mechanisms.

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The criminal prosecution approach to transitional accountability has significant advantages in principle: it provides the most direct form of accountability, it affirms the principle that no one is above the law, and it can deter future violations through the demonstration that power will not protect wrongdoers indefinitely. But it also faces characteristic challenges in transitional contexts: the evidence of past crimes is often difficult to gather and present under criminal law standards; the courts and prosecution services may lack the capacity and independence necessary for effective prosecution; and the politically charged character of many cases creates pressures that distort the judicial process.

The Nuremberg and Tokyo tribunals after World War II established the principle that criminal accountability for gross violations of human rights was not merely possible but required, regardless of the official positions of the perpetrators. The subsequent development of international criminal law, including the creation of the International Criminal Court and the ad hoc tribunals for the former Yugoslavia and Rwanda, has institutionalized this principle and developed the doctrinal framework for its application. But the Nuremberg and post-conflict tribunal models are not directly applicable to the Bangladesh situation, where the violations at issue were corruption rather than mass atrocity, and where the temporal and political context was transitional rather than post-conflict.

The more relevant comparative models are the anti-corruption campaigns of Hong Kong under the Independent Commission Against Corruption (ICAC), Singapore under the Corrupt Practices Investigation Bureau (CPIB), and more recently, the anti-corruption efforts in countries like South Korea, Brazil, and Italy. These cases provide a range of institutional designs and enforcement strategies, from the relatively consensual and institution-building approach of Singapore and Hong Kong to the more confrontational and prosecutorially aggressive approach of South Korea's special prosecutors and Brazil's "Car Wash" operation.

The Hong Kong ICAC model, established in 1974, is particularly instructive because it addressed a situation of systemic corruption embedded in both the police force and the broader public sector, a situation that had some structural similarities to Bangladesh's governance crisis in 2007. The ICAC's success in dramatically reducing Hong Kong's corruption over a period of years rested on several institutional features: genuine operational independence from the executive, adequate funding and staffing, a comprehensive approach that combined enforcement with prevention and education, and the strong backing of political authority that was itself insulated from the corruption networks being dismantled. The Fakhruddin government's attempt to replicate some of these features in its reconstituted ACC was ambitious and partially successful, but it operated in a far more difficult political environment and without the institutional advantages that colonial Hong Kong's legal system provided.

23.3 The Indian Experience: Judicial Activism and Constitutional Development

India's constitutional experience is the most directly relevant comparative reference for understanding Bangladesh's constitutional development, given the shared colonial legal heritage, the similar institutional structures, and the long tradition of intellectual and jurisprudential exchange between the two countries' legal communities. The evolution of Indian constitutional

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jurisprudence over more than seven decades provides a rich source of both precedent and theoretical frameworks for analyzing the questions raised by the Fakhruddin period.

The Indian Supreme Court's development of the basic structure doctrine in Kesavananda Bharati v. State of Kerala (1973) has already been mentioned as directly relevant to the Bangladesh basic structure debates. But the Indian constitutional experience is relevant at many other levels as well.

Indian constitutional jurisprudence on emergency powers, developed through the experience of the Emergency period of 1975 to 1977 under Indira Gandhi, provides directly applicable analysis of the risks of emergency powers abuse and the constitutional safeguards necessary to prevent it. The Forty-Fourth Amendment to the Indian Constitution, adopted in 1978 in direct response to the Emergency experience, significantly strengthened the constitutional constraints on emergency powers, removing the President's discretion in the emergency declaration, requiring Cabinet approval, and strengthening parliamentary oversight of the emergency declaration. This legislative response to the Emergency experience illustrates a general principle: that the constitutional safeguards for emergency powers tend to be strengthened, rather than weakened, in the aftermath of episodes of emergency powers abuse.

India's experience with anti-corruption enforcement through the Central Bureau of Investigation (CBI), which has faced persistent criticism for its political instrumentalization by successive governments, also provides a cautionary comparison for the Bangladesh ACC experience. The CBI's problems, which are structural rather than merely personnel-dependent, include its formal subordination to the Prime Minister's Office (which exercises supervisory control over its operations), its insufficient operational independence, and the perception that its investigations are selectively directed at political opponents of the ruling party. The structural parallels with the Bangladesh ACB (which the ACC was designed to replace) are obvious, and the Indian experience suggests that genuine anti-corruption enforcement requires not merely a change of personnel but a fundamental redesign of institutional relationships and accountability mechanisms.

The Indian Election Commission, which has been mentioned as an alternative model to the caretaker government system, also provides important comparative material. The Election Commission's development, under successive distinguished Chief Election Commissioners, into a genuine institutional force capable of constraining electoral malpractice by incumbent governments demonstrates that strong independent institutions can provide meaningful safeguards for electoral integrity even within the framework of elections conducted under partisan governments. The Commission's practice of issuing Directions to the government under the Model Code of Conduct, transferring partisan officials, and in some cases recommending the postponement of elections in jurisdictions where conditions do not permit a free and fair vote, has provided a degree of electoral protection that, while different from that provided by the caretaker model, is substantively significant.

23.4 The South African Constitutional Court and Transformative Constitutionalism

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South Africa's post-apartheid constitutional experience offers a theoretically rich comparative perspective on the relationship between constitutional law and social transformation in deeply unequal societies. The South African Constitutional Court, established under the 1996 Constitution, has developed an approach known as "transformative constitutionalism" that seeks to use constitutional law as an instrument of the fundamental social transformation that the end of apartheid required.

Transformative constitutionalism, as developed by scholars like Karl Klare and Theunis Roux and applied in the jurisprudence of the South African Constitutional Court, holds that constitutions in post-colonial and post-authoritarian societies have a distinctive character: they are not merely the codification of existing social arrangements but an aspirational projection of a different and better society that the constitution is designed to help bring into existence. On this view, constitutional interpretation should be guided not merely by the original understanding of the constitutional text or by existing social norms but by a transformative vision of the society that the constitution is designed to create.

The relevance of transformative constitutionalism to the Bangladesh context is complex. Bangladesh's constitutional experience has, in important respects, embodied a transformative aspiration, particularly in its original 1972 constitution with its commitments to democracy, socialism, secularism, and Bengali nationalism. The language of transformation has been prominent in the jurisprudential and political discourse surrounding the constitutional reforms of 2024 to 2026, with both the student-led uprising that brought down the Hasina government and the subsequent constitutional reform agenda explicitly invoking the idea of fundamental transformation of Bangladesh's governance.

But the transformative constitutionalism framework also raises challenging questions about the proper role of courts in driving social transformation. Courts are, institutionally, reactive rather than proactive; they respond to cases brought before them rather than initiating social change. They are also, in most legal systems, professionally isolated from popular politics and social movements, which raises questions about whether their judgments can genuinely reflect popular aspirations or will inevitably reflect the perspectives and values of the legal elite. And they depend on other institutions for the implementation of their judgments, which means that their transformative ambitions are dependent on the political will of governments that may be committed to very different transformative projects.

The Bangladesh Supreme Court's evolving role in constitutional development, culminating in the November 2025 judgment restoring the caretaker system and the March 2026 full judgment with its explicit critique of the 2011 decision, reflects elements of transformative constitutional ambition. The court's characterization of free and fair elections as part of the basic structure, its description of the abolition of the caretaker system as a "judicial murder of democracy," and its explicit acknowledgment that a previous judgment may have been politically compromised, all suggest a court that sees itself as playing an active role in the reconstruction of Bangladesh's democratic institutions.

Whether this judicial activism can be sustained and whether it will contribute to genuine democratic transformation or merely to a new cycle of institutional politics is one of the most

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important questions confronting Bangladesh's constitutional order in the immediate aftermath of the February 2026 elections.

CHAPTER TWENTY-FOUR: THE ELECTORAL LAWS AND ELECTION COMMISSION REFORM: LEGAL ARCHITECTURE FOR DEMOCRATIC TRANSITION

24.1 The Electoral Legal Framework: Constitutional Provisions and Statutory Architecture

The core mission of the Fakhruddin government was the organization and oversight of credible elections that would restore democratic legitimacy to Bangladesh's governance. This mission required comprehensive attention to the legal framework governing elections: the constitutional provisions, the statutory laws, the administrative regulations, and the institutional arrangements that together determined how elections were conducted, who could participate, and how the results were counted, verified, and reported.

The constitutional framework for elections in Bangladesh is established primarily in Part VII of the Constitution, which creates the Election Commission (Articles 118 to 126), defines the qualifications and disqualifications for membership of Parliament (Article 66), establishes the basis for parliamentary constituencies (Article 121), and provides for the general conduct of elections (Article 122). These constitutional provisions were supplemented by a substantial body of electoral legislation, including the Representation of the People Order, 1972, the Election Commission Act, the Local Government Election Act, and various regulations made under these instruments.

The most consequential reform of the electoral legal framework undertaken during the Fakhruddin period was the comprehensive reform of voter registration. When the caretaker government took office in January 2007, the electoral rolls of Bangladesh were in a state of extraordinary disrepair. The rolls were estimated to contain millions of fake or duplicate entries, ghost voters who did not exist but whose entries could be used to cast fraudulent votes, and omissions of genuine voters. The rolls had not been systematically updated for years, and the process of updating them was itself vulnerable to manipulation by local political actors who could influence the inclusion or exclusion of voters based on their perceived political affiliations.

The Fakhruddin government's decision to create a new voter registration system from scratch, using biometric technology (specifically fingerprint data) to create a national database of registered voters, was one of its most ambitious and ultimately most successful institutional reforms. The project required the registration of more than 80 million voters, the collection and digitization of biometric data for each registrant, and the creation of the technological infrastructure necessary to maintain and use the resulting database. It was, by any measure, an enormous logistical and administrative undertaking, and its successful completion in time for the December 2008 elections was a significant achievement of the caretaker period.

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The legal basis for the voter registration reform was the Voter Registration Rules, 2007, issued under ordinance authority, which established the new registration system's procedures and requirements. The rules required each voter to present identification documents and to provide fingerprint data as part of the registration process, creating a biometric identity link between the registered voter and the physical person. The national voter identity card produced by the system became, over time, a de facto national identity document, used for purposes well beyond electoral participation, in a country that had previously lacked a comprehensive national identification system.

24.2 The Election Commission: Constitutional Independence and Practical Constraints

The Bangladesh Election Commission, established by Article 118 of the Constitution, is formally an independent constitutional body with authority over the conduct of elections and referenda. The Chief Election Commissioner and the other Election Commissioners are appointed by the President and can be removed only through the same procedure applicable to Supreme Court judges (an address of Parliament followed by a formal process of removal). These formal independence guarantees are designed to insulate the Commission from executive pressure during election periods.

The practical independence of the Election Commission has, however, been deeply contested throughout Bangladesh's post-independence history. Critics have consistently argued that the appointment process, which in practice gives the executive enormous influence over who becomes Chief Election Commissioner, means that the formal independence guarantees are insufficient to prevent the Commission from reflecting the preferences of the government that appointed its members. The specific controversies over the conduct of the 2006 to 2007 caretaker crisis were, in part, controversies about whether the Election Commission under Justice A.T.M. Shamsul Huda was genuinely independent or was in fact acting in concert with the military-backed caretaker arrangement.

The Fakhruddin government undertook significant reforms to the Election Commission's institutional capacity and operational procedures. The voter registration reform described above was the most significant, but the government also invested in election administration training, in the development of electoral regulations, and in the strengthening of the Commission's enforcement capacity. These investments in institutional capacity were designed to make the Commission more effective as an election management body, regardless of the political independence questions.

The legal question of how to ensure the genuine independence of constitutional bodies like the Election Commission from executive influence is one of the most challenging problems in institutional design. The formal legal guarantees, including security of tenure, fixed terms, and special removal procedures, are necessary but not sufficient. The appointment process is critical, because a Commission whose members were all appointed by a government sympathetic to one political party cannot be expected to administer elections impartially, regardless of the formal independence guarantees.

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Various institutional design solutions to the appointment problem have been tried in different countries. Independent advisory commissions to recommend appointments, parliamentary confirmation of presidential nominations, fixed terms that span multiple government cycles so that no single government can appoint a majority of Commission members, and automatic succession systems (like the Chief Justice model of the 13th Amendment) are all mechanisms that have been used to reduce executive control over institutional appointments. Each has its advantages and limitations, and the appropriate solution depends on the specific political context and the character of the institutional relationships involved.

The constitutional reform agenda of 2025 to 2026 in Bangladesh proposed a new appointment mechanism for the Election Commission that drew on these comparative design insights. The July National Charter of 2025 proposed a selection committee for Election Commission appointments that would include representatives from the ruling party, the opposition, and civil society, rather than giving the President (acting on the Prime Minister's advice) the sole appointment power. This proposal reflected a sophisticated understanding of the appointment problem and represented a significant institutional design improvement over the existing arrangements.

24.3 Electoral Law Reform: The Representation of the People Order and its Amendments

The Representation of the People Order (RPO) 1972 and its subsequent amendments constitute the primary statutory basis for electoral law in Bangladesh. The RPO establishes the detailed rules for the nomination of candidates, the qualifications and disqualifications for candidacy, the campaign conduct rules, the voting procedures, the counting of votes, and the adjudication of electoral disputes.

The Fakhruddin government made significant amendments to the RPO through ordinances issued during the emergency period. The most important of these amendments related to candidate qualifications, campaign finance disclosure, and the enforcement of electoral offenses.

The candidate qualification amendments introduced several new disqualifications for parliamentary candidacy. Most controversially, the amendments disqualified persons who were defaulters on bank loans above a specified threshold, who had been convicted of corruption or financial crimes, or who had criminal cases pending against them. These disqualifications were explicitly designed to address the perceived problem of corrupt politicians using parliamentary seats as a shield against criminal prosecution, a practice that had been widely noted in Bangladesh's political discourse.

The disqualification for pending criminal cases was the most legally controversial of these amendments. Critics argued that disqualifying persons who had merely been charged with crimes, not convicted of them, violated the fundamental principle that a person is innocent until proven guilty. The constitutional right to equality and the right to participate in political life through candidacy (if not explicitly stated in the Bangladesh Constitution, at least implied by the democratic character of the constitutional order) were advanced as grounds for challenging the amendment.

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The jurisprudential debate about the permissibility of disqualifying persons with pending criminal cases from standing for election has counterparts in the constitutional law of many countries. In India, the Supreme Court's 2013 judgment in Lily Thomas v. Union of India struck down a provision of the Representation of the People Act that had permitted sitting legislators to continue in office after conviction for serious criminal offenses while their appeals were pending, on the grounds that this provision was discriminatory between candidates (who were disqualified on conviction) and sitting members (who were not). The Indian judgment was celebrated as an important step against the criminalization of politics.

The Bangladesh situation under the Fakhruddin amendments was in some respects more aggressive: it disqualified not merely those convicted but those with pending cases. The tension between the right to participate in democratic politics and the state's interest in excluding corrupt persons from political power is a genuine constitutional dilemma that does not have an obvious correct resolution. Democratic systems around the world have adopted a range of different approaches, from the minimal disqualification rules of many established democracies (which disqualify only those convicted and imprisoned above a threshold) to the more aggressive approaches of some transitional democracies (which attempt to use pre-conviction disqualification as a mechanism for preventing corrupt politicians from using office as a shield).

24.4 The International Observation Framework: Standards and Their Application

The December 2008 elections that ended the Fakhruddin government's tenure were subject to extensive international observation, conducted by a range of organizations including the Carter Center, the European Union Election Observation Mission, the Commonwealth Observer Group, and the Asian Network for Free Elections. The framework within which these observer missions operated, and the standards they applied in assessing the elections' credibility, deserve examination both for what they reveal about the international dimensions of Bangladesh's democratic development and for the theoretical questions they raise about the nature and limits of election observation.

The professional standards for international election observation are established primarily by the Declaration of Principles for International Election Observation, a consensus document adopted in 2005 and endorsed by more than fifty intergovernmental organizations and major civil society organizations. The Declaration establishes that election observation missions must be impartial and accurate in their assessments, must not interfere with the electoral process, must not pronounce electoral results, and must apply international standards consistently across all missions regardless of the political interests of the governments or organizations involved.

The specific standards that observer missions apply in assessing elections draw on international instruments including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and regional human rights instruments. These instruments establish principles including: the right of citizens to vote in genuine periodic elections, the right to participate in government directly or through freely chosen representatives, the right to equal suffrage, the right to a secret ballot, and the right to freedom of expression, assembly, and association as necessary conditions for meaningful electoral participation.

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Applied to the December 2008 elections in Bangladesh, the international observer missions generally reached favorable assessments. The Carter Center's final report characterized the elections as competitive and credibly administered, noting the significance of the biometric voter registration system in addressing the fraudulent voting problems that had plagued earlier elections. The EU mission similarly gave a broadly positive assessment, while noting concerns about certain aspects of the pre-election environment, including restrictions that had been imposed on political activity during the emergency period.

The generally positive international assessment of the 2008 elections is significant for evaluating the legacy of the Fakhruddin government, because it suggests that the institutional reforms of the caretaker period did, in fact, improve the quality of the electoral process in measurable ways that international observers found credible. Whatever the controversies about the anti-corruption campaign and the human rights record of the emergency period, the core mission of preparing and conducting credible elections was, by the most authoritative independent assessments, accomplished.

CHAPTER TWENTY-FIVE: THE ORDINANCE-MAKING POWER: LEGISLATIVE THEORY, CONSTITUTIONAL LIMITS, AND THE FAKHRUDDIN RECORD

25.1 The Constitutional Framework for Ordinance-Making

Article 93 of the Bangladesh Constitution grants the President the power to promulgate ordinances when Parliament is not in session and when the President is satisfied that circumstances exist that render immediate action necessary. This power, inherited from the Pakistani constitutional tradition which itself drew on the Government of India Act 1935, is a standard feature of parliamentary constitutional systems in the South Asian tradition. Its purpose is to allow necessary legislation to be enacted when Parliament cannot be convened quickly enough to address urgent matters.

The ordinance-making power is, in constitutional theory, a delegated legislative power exercised by the executive in the name of the legislature. The ordinance's authority is temporary: it must be laid before Parliament when Parliament next meets, and if Parliament does not confirm it within thirty days (or such other period as the constitution specifies), it lapses. This temporary, confirmatory character is designed to preserve parliamentary sovereignty: the executive can act in an emergency, but Parliament retains the final say.

The practical operation of the ordinance-making power in Bangladesh has not, however, conformed to this theoretical model. Successive governments have used ordinances extensively for purposes that were not genuinely urgent, re-promulgating lapsing ordinances rather than presenting them to Parliament for confirmation, and treating the ordinance power as a substitute for parliamentary legislation rather than a supplement to it. This practice has been widely criticized by constitutional scholars and courts as an abuse of the ordinance-making power, but it has continued because of the political difficulties that governments face in securing parliamentary majorities for their legislative agendas.

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The Fakhruddin government's use of the ordinance power during the caretaker period was, in quantitative terms, extraordinary: more than 133 ordinances in approximately two years. The justification for this volume of ordinance-making was that Parliament was dissolved (having completed its term) and that the government was operating under emergency conditions that required immediate legislative action in many areas. This justification was formally adequate under the constitutional text, which requires only that Parliament be not in session and that circumstances requiring immediate action exist.

The constitutional challenge to this justification is more theoretical than textual. It argues that while the ordinance power is available to any government when Parliament is not in session, a caretaker government has a special constitutional character that limits the range of subjects on which it should legislate. The caretaker government's mandate is transitional and temporary, focused on maintaining essential governance and overseeing elections. It lacks the democratic legitimacy of an elected government and should not use its temporary legislative authority to make permanent changes to the legal order that an elected Parliament would have debated and decided differently.

This argument draws on the principle of constitutional fidelity to mandate, the idea that governmental authority should be exercised consistently with the purposes for which it was granted. A caretaker government's legislative authority, on this view, is authority to maintain the legal order and manage the transition, not authority to reconstitute the legal order in fundamental ways. The Fakhruddin government's most far-reaching ordinances, including those reconstituting the Anti-Corruption Commission, restructuring the judiciary, and reforming the electoral system, went beyond what this mandate-fidelity principle would authorize.

25.2 The Specific Ordinances: Analysis of Key Legislative Instruments

Among the 133 ordinances issued during the Fakhruddin period, several deserve particular analytical attention for their substantive content, their constitutional significance, and their long-term legal legacy.

The Anti-Corruption Commission (Amendment) Ordinance, 2007, was the primary legal instrument for the reconstitution of the ACC and the expansion of its powers. This ordinance significantly amended the Anti-Corruption Commission Act, 2004, by strengthening the Commission's independence, expanding its investigative powers, and establishing the special courts for the trial of corruption offenses. Its constitutional significance derived from its intersection with fundamental rights provisions (particularly the right to equality before the law and the right to a fair trial) and from the questions it raised about the proper scope of emergency legislative authority.

The Code of Criminal Procedure (Amendment) Ordinance, 2007, made sweeping changes to Bangladesh's criminal procedure, affecting bail provisions, remand powers, and procedural requirements in ways that had significant implications for the treatment of persons accused of crimes, including corruption offenses. Critics argued that the ordinance's restrictions on bail for certain offenses were disproportionate and inconsistent with the constitutional right to personal liberty protected by Article 32.

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The Political Parties (Registration and Activities) Ordinance, 2007, attempted to impose registration requirements on political parties and to regulate their finances and internal management. This ordinance raised fundamental questions about the constitutional protection of political parties and the extent to which the state can regulate their internal affairs, questions that connect to the broader literature on political party law and the constitutional status of parties in democratic systems.

The Money Laundering Prevention Ordinance, 2007, significantly strengthened Bangladesh's legal regime for preventing financial crimes, bringing the country's legal framework closer to international standards and addressing vulnerabilities that had been identified in assessments by the Financial Action Task Force. This ordinance had relatively strong constitutional foundations and represented a genuine regulatory improvement that survived the caretaker period relatively intact.

The Telecommunications Regulatory Commission (Amendment) Ordinance, 2007, addressed governance issues in the telecommunications sector, a sector that had been a major site of rent-seeking and corruption under previous governments. The ordinance attempted to strengthen regulatory independence and transparency, with mixed success.

The review of these ordinances that the Parliament elected in February 2026 faces is not merely a technical legislative exercise but a substantive constitutional debate about which aspects of the Fakhruddin government's legislative legacy deserve to be confirmed, modified, or repealed. The judgment that the new Parliament makes will, in effect, be a democratic assessment of the non-democratic government's legislative record, filling in the democratic deficit that was inherent in the ordinance-making process with the legitimating authority of elected representatives.

25.3 Legislative Theory and the Unelected Legislator: Philosophical Foundations

The extensive ordinance-making activity of the Fakhruddin government raises deep questions about the philosophical foundations of legislative authority and the conditions under which legislation produced by non-democratic means can be considered legitimate. These questions connect to some of the most fundamental debates in political philosophy about the nature and justification of political obligation.

The democratic theory of legislative legitimacy holds that legislative authority derives from the consent of the governed, expressed through periodic elections that give the legislative body its mandate to make law. On this view, legislation enacted by a body that lacks democratic election is legitimate only to the extent that it can be justified by reference to some substitute for democratic authorization, such as temporary emergency necessity, explicit delegation from an elected body, or the substantive quality of the legislation itself.

The contractarian tradition, running from Locke through Rousseau to Rawls, grounds political obligation in a hypothetical or actual social contract through which individuals agree to submit to political authority in exchange for the protection of their fundamental rights and interests. The Lockean strand of this tradition emphasizes that political authority is a trust, held by governors on behalf of the governed, and that it may be forfeited if exercised in ways that violate the terms

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of the trust. The Rawlsian strand emphasizes that political obligations must be grounded in principles of justice that rational persons behind a veil of ignorance would agree to, principles that give appropriate weight to fundamental rights and fair equality of opportunity.

Applied to the Fakhruddin ordinances, the contractarian framework asks whether the legislative activity of the caretaker government was consistent with the trust that justified its exercise of authority, and whether its legislative products were consistent with principles of justice that Bangladeshis could reasonably accept regardless of their partisan affiliations. On the first question, the answer is mixed: some ordinances were within the range of the government's transitional mandate, while others exceeded it. On the second question, most of the substantive legislative reforms, particularly those addressing judicial independence, electoral integrity, and anti-corruption enforcement, were consistent with principles that most Bangladeshis, across partisan lines, could endorse in principle.

The participatory democratic tradition, associated with thinkers like Rousseau, Mill, and more recently Habermas and Mouffe, emphasizes the value of the legislative process itself, not merely the quality of its outputs. On this view, legislation has value not simply as a means of solving social problems but as a form of collective self-governance, through which citizens exercise their capacity for political agency and contribute to the shaping of their shared social world. Legislation produced by an unelected body, however technically competent, lacks this dimension of participatory value and is therefore less legitimate than equivalent legislation produced through democratic processes.

This participatory critique of the Fakhruddin ordinances is powerful in principle, but it must be set against the practical reality of Bangladesh's democratic situation in 2007 and 2008: the existing democratic system had failed to produce the legislative reforms that were clearly needed, not because the population opposed them but because the partisan incentive structures of competitive electoral politics made it rational for each party to obstruct the reforms that its rivals were in a position to claim credit for. The gridlock of Bangladesh's partisan politics had, in effect, paralyzed the democratic legislative process on many important subjects for years. Whether this circumstance justified the non-democratic legislative activism of the caretaker period is a question on which reasonable people can and do disagree, and it deserves the serious analytical engagement that it has not always received.

CHAPTER TWENTY-SIX: THE POLITICAL PARTY REFORM AGENDA: CONSTITUTIONAL DIMENSIONS AND JURISPRUDENTIAL DEBATES

26.1 Political Parties in Constitutional Theory

The constitutional and jurisprudential status of political parties in democratic systems is a subject of considerable complexity and recent analytical development. The traditional constitutional law literature, particularly in the common law tradition, treated political parties as private associations largely outside the scope of constitutional regulation, subject to ordinary civil law rather than constitutional principles. This treatment reflected a conceptual framework in which

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the constitution governed the relationship between the state and its citizens, and parties, as non-governmental organizations, fell outside this framework.

This conceptual framework has been increasingly challenged by the political reality that parties are not merely private associations but fundamental institutions of democratic governance. Without political parties, there can be no organized competition for power, no aggregation of diverse interests into coherent governmental programs, no accountability of governments to electorates between elections, and no sustained democratic politics of the kind that modern liberal democracies require. Parties are, in the language of the German Basic Law, which was among the first constitutions explicitly to address parties as constitutional actors, "necessary for the formation of the political will of the people."

The German constitutional approach to political parties, developed in Article 21 of the Basic Law and in the jurisprudence of the Federal Constitutional Court, establishes several important principles. Political parties that participate in the political process must have democratic internal structures. Parties that seek to undermine the free democratic basic order may be prohibited by the Federal Constitutional Court. Parties that compete in elections receive public financing proportional to their electoral support, on the grounds that the free competition of parties is a public good that the state has an interest in supporting.

This German model has influenced constitutional developments in many other countries, and it provides a useful comparative reference for evaluating the Fakhruddin government's political party reform agenda. The attempt to impose registration requirements, transparency obligations, and internal democracy standards on Bangladeshi political parties, through the Political Parties (Registration and Activities) Ordinance of 2007, was an attempt to bring the constitutional framework for parties in Bangladesh closer to the German model.

The constitutional justification for this regulatory approach is that parties, although formally private organizations, perform public functions that justify public regulation. Parties are the primary mechanism through which citizens participate in governance, the primary vehicle for the selection of candidates for public office, and the primary link between the preferences of the electorate and the decisions of the government. Their proper functioning is therefore not merely a matter of private concern but a condition for the effective operation of democratic governance.

The specific regulatory requirements that the Fakhruddin ordinance sought to impose included registration with the Election Commission, disclosure of membership and financial information, requirements for democratic internal elections to party leadership positions, and prohibitions on party donations from certain sources. These requirements were designed to address specific problems that had been identified in Bangladesh's party system: the concentration of power in single dominant figures (particularly the family dynasties of the AL and BNP), the opacity of party finances, the absence of internal democracy, and the permeability of party financing to corrupt interests.

26.2 The Minus-Two Formula: Political Engineering and Its Legal Complications

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The most controversial aspect of the Fakhruddin government's political party reform agenda was not the formal legal changes but the informal political project that became known as the "minus-two" formula: the idea, attributed to elements within the military-backed government, of using the anti-corruption prosecutions to remove both Sheikh Hasina and Khaleda Zia from political life, thereby creating space for the emergence of a "reformed" political class that would break the dominance of the two women-led party dynasties.

The "minus-two" formula was never formally acknowledged as government policy, and Fakhruddin Ahmed consistently denied that it was the government's intention. But the circumstantial evidence, including the timing and targeting of the anti-corruption prosecutions, the signals emanating from the military establishment, and the encouragement given to so-called "reformist" elements within the major parties, strongly suggested that elements within the government were pursuing something like this agenda.

From a constitutional and jurisprudential perspective, the "minus-two" formula raised profound questions about the proper use of criminal prosecution in democratic societies. The use of criminal prosecutions to remove political opponents from competition is a characteristic feature of authoritarian governance, and it has been widely condemned by human rights organizations and constitutional scholars as a fundamental violation of the right to participate in political life. The procedural fairness of the prosecution process, which in the Bangladesh case was already compromised by the emergency powers framework and the special courts, becomes even more fraught when the prosecutions serve political as well as law enforcement purposes.

The right to participate in political life, including the right to compete for elected office, is protected both by the Bangladesh Constitution (which establishes democratic governance as a fundamental state principle) and by international human rights instruments (particularly Article 25 of the ICCPR). Any prosecution that targets a person for political reasons, or that is conducted in a manner designed to ensure a conviction regardless of the evidence, violates these protections.

The ultimate failure of the "minus-two" formula, if indeed it was pursued, is evidenced by the December 2008 elections, in which the Awami League under Sheikh Hasina won a landslide victory, demonstrating both that she had survived the prosecution campaign and that the Bangladesh electorate was not disposed to accept externally-imposed restrictions on their political choices. This outcome was, in an important sense, a vindication of democratic principles: the attempt to engineer the political landscape from above through legal manipulation failed because it could not survive the test of a genuinely competitive election.

26.3 Civil Society and Democratic Participation: The Role of Non-Governmental Organizations

The role of civil society organizations in Bangladesh's democratic development during the Fakhruddin period deserves attention as a dimension of the legal and constitutional landscape that is often underappreciated in formal constitutional analysis. Civil society organizations, including NGOs, professional associations, media organizations, and community groups, played

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a significant role both in the political crisis that preceded the caretaker government and in the governance activities of the caretaker period itself.

Bangladesh has one of the most vibrant civil society sectors in South Asia, partly as a legacy of the development NGO sector that emerged in the post-Liberation War period to address the massive humanitarian needs of the new state, and partly as a product of the relatively open political environment that characterized Bangladesh for much of the post-Ershad period. Organizations like BRAC, Grameen Bank, the Bangladesh Rural Advancement Committee, and numerous professional associations and advocacy organizations constitute a significant dimension of Bangladesh's governance landscape, providing services, advocacy, and accountability that the state often fails to deliver.

During the Fakhruddin period, civil society organizations played a complex and sometimes ambiguous role. Some organizations, particularly those associated with the business community and the professional class, were active supporters of the caretaker government's reform agenda, seeing it as an opportunity to address governance failures that had frustrated development for years. Others, particularly those associated with electoral monitoring and human rights advocacy, were critical of the human rights record of the emergency period, particularly the arbitrary detentions and the suppression of political activity.

The legal framework governing civil society organizations in Bangladesh, including the NGO Affairs Bureau regulations and the requirements for foreign funding registration, gave the government significant regulatory leverage over civil society organizations, creating a potential for the instrumentalization of regulatory power to control civil society behavior. This leverage was, during the Fakhruddin period, used with relative restraint, but its existence as a potential tool of civil society control was a matter of concern for organizations dependent on foreign funding for their operations.

CHAPTER TWENTY-SEVEN: THE CONSTITUTIONAL JURISPRUDENCE OF 2007 TO 2008: COURTS, EMERGENCY, AND CONSTITUTIONAL REVIEW

27.1 The High Court Division During the Emergency: Institutional Behavior and Constitutional Dynamics

The behavior of the High Court Division of the Bangladesh Supreme Court during the emergency period of 2007 to 2008 was a fascinating and in some respects troubling episode in the institutional history of Bangladesh's judiciary. The court's response to the emergency was neither one of complete collaboration with the executive nor one of principled resistance, but rather a complex accommodation in which the court maintained its institutional existence and some of its functions while largely acquiescing in the executive's most significant claims of emergency authority.

The most significant dimension of this accommodation was the court's general refusal to entertain habeas corpus petitions challenging emergency detentions. The Constitutional

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protection for habeas corpus, which is among the most fundamental and ancient protections in the common law tradition, permits any detained person to seek judicial review of the legality of their detention. During the emergency period, the court repeatedly declined to issue habeas corpus rules in cases involving persons detained under the Emergency Powers Rules, on the grounds that the emergency declaration had suspended the constitutional provisions under which habeas corpus was typically sought.

This judicial position was legally defensible on narrow textual grounds, given that the emergency declaration explicitly suspended certain fundamental rights provisions. But it was deeply problematic from a constitutional principle perspective, because it effectively removed judicial oversight from the most coercive exercise of executive power, namely the detention of persons without criminal charge. The history of emergency powers abuse, in Bangladesh and elsewhere, consistently demonstrates that the detention power is the most likely to be abused when judicial oversight is removed, and the Fakhruddin period was no exception.

At the same time, the High Court Division did maintain its functioning in areas outside the emergency powers, continuing to hear civil cases, commercial disputes, and constitutional challenges that did not directly challenge the emergency framework. In some cases, the court issued judgments that constrained aspects of the government's conduct, demonstrating that judicial independence had not been entirely surrendered.

The theoretical framework for evaluating judicial behavior in emergency conditions draws on an extensive literature in comparative constitutional law. One important strand of this literature, associated with scholars like Kim Lane Scheppele, emphasizes the importance of constitutional courts maintaining their institutional integrity and some degree of independence even during emergencies, because the alternative, courts that simply defer to executive emergency claims, removes the last institutional check on executive power abuse and makes the legal order complicit in authoritarian governance.

Another strand, associated with the political science literature on judicial behavior, emphasizes that courts are strategic actors that make institutional calculations about the likely consequences of their decisions. Courts in politically vulnerable institutional situations will tend to pick their confrontations carefully, maintaining independence in areas where they can credibly assert it while deferring in areas where confrontation would be futile or self-destructive. On this view, the Bangladesh court's selective deference during the emergency period may have reflected a rational institutional calculation about how to preserve judicial credibility for the longer term.

27.2 Key Constitutional Cases During the Caretaker Period

Despite the general pattern of judicial accommodation to the emergency framework, the Fakhruddin period produced several important constitutional cases that developed Bangladesh's constitutional jurisprudence in significant ways.

The cases challenging various aspects of the Political Parties Ordinance raised important questions about the constitutional rights of political parties and their members. The right to form and participate in political associations is implied by the democratic character of Bangladesh's

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constitutional order, even if it is not explicitly stated as a fundamental right in the constitutional text. Several High Court petitions challenged specific provisions of the ordinance as inconsistent with these implied constitutional rights.

The cases challenging the disqualification provisions for parliamentary candidacy raised fundamental questions about the relationship between criminal justice and democratic participation. The disqualification of persons with pending criminal cases from standing for Parliament, which was one of the most controversial of the Fakhruddin government's electoral law reforms, was challenged in the courts on the grounds that it violated the principle of innocence until conviction. The court's handling of these challenges, which was mixed and not fully satisfying from a constitutional principle perspective, illustrated the difficulties that courts face when addressing politically charged constitutional questions in emergency conditions.

The cases involving media freedom raised questions about the extent to which the government's powers to restrict publication and broadcasting during the emergency were consistent with the constitutional protection of freedom of expression. Bangladesh's print and broadcast media operated under significant restrictions during the emergency period, with journalists detained and publications forced to censor certain content. These restrictions generated legal challenges that, while largely unsuccessful during the emergency itself, contributed to the development of Bangladesh's media law jurisprudence.

27.3 The Doctrine of Necessity and Its Application

One important jurisprudential doctrine that figured in the legal debates about the Fakhruddin government was the doctrine of necessity, which has played a significant role in the constitutional history of several South Asian countries, particularly Pakistan. The doctrine holds that in extreme situations where normal constitutional processes have broken down and where the only alternative to extra-constitutional action is governmental chaos or civil violence, courts may uphold governmental acts that lack formal constitutional authorization on the grounds of necessity.

The doctrine of necessity has a troubled history in South Asian constitutional jurisprudence. In Pakistan, it was invoked by the Supreme Court to validate the military takeovers of 1958, 1977, and 1999, providing judicial legitimacy for the overthrow of elected governments in ways that many constitutional scholars have found deeply problematic. The Pakistani courts' repeated invocation of the necessity doctrine to legitimate military rule contributed to a constitutional culture in which democratic governance was treated as contingent on military approval rather than as the default principle of the constitutional order.

In Bangladesh, the necessity doctrine was never explicitly invoked by the courts to validate the Fakhruddin government's assumption of power, but it figured implicitly in the legal discourse around the government's constitutional status. The argument that the extraordinary circumstances of January 2007, including the political crisis, the electoral system collapse, and the threat of widespread violence, justified the emergency declaration and the appointment of the caretaker government beyond the normal caretaker procedures, was in substance a necessity argument.

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The difficulty with necessity arguments in constitutional law is precisely their indeterminacy. What counts as an extreme enough situation to justify extra-constitutional action? Who determines whether the situation is sufficiently extreme? And how does the invocation of necessity prevent it from becoming a standard justification for any powerful actor who claims that existing constitutional constraints are inconvenient? These questions have never been satisfactorily answered in the necessity doctrine literature, and they represent a fundamental vulnerability of the doctrine as a constitutional principle.

The movement away from the necessity doctrine in South Asian constitutional jurisprudence, particularly in the Pakistan Supreme Court's increasing reluctance to validate military rule after the Chaudhry Court confrontations with Musharraf, represents a significant constitutional development that has implications for Bangladesh as well. The message from the post-Musharraf Pakistani constitutional evolution is that necessity arguments, however plausible they may seem in the moment, are ultimately incompatible with the consistent application of constitutional principles, because they introduce a degree of ad hoc judicial reasoning that undermines the predictability and rule of law values that constitutionalism is supposed to protect.

CHAPTER TWENTY-EIGHT: THE NOVEMBER 2025 JUDGMENT AND THE MARCH 2026 FULL VERDICT: RETROSPECTIVE CONSTITUTIONAL ADJUDICATION

28.1 The Supreme Court Returns: Reviewing the 2011 Decision

The most dramatic and constitutionally significant development in Bangladesh's constitutional history since the 2007 to 2008 caretaker period is the Supreme Court's review and reversal of the 2011 judgment that had struck down the Thirteenth Amendment and abolished the caretaker government system. The short order delivered on November 20, 2025, and the full judgment published on March 12, 2026, represent a comprehensive retrospective judicial assessment of the constitutional questions that the Fakhruddin period raised and that the 2011 judgment had purported to settle.

To understand the significance of these judgments, it is necessary to understand the 2011 decision that they reversed. In the case of Khandaker Delwar Hossain and Others v. Bangladesh Italian Marble Works Limited, the Appellate Division of the Supreme Court of Bangladesh, led by then Chief Justice A.B.M. Khairul Haque, held that the Thirteenth Amendment was unconstitutional on the grounds that it was inconsistent with the basic structure of the Constitution. The court's reasoning was that the Constitution's democratic character required that the executive be accountable to the elected legislature, and that a caretaker government, which was appointed rather than elected, was incompatible with this requirement.

This reasoning was paradoxical to many commentators. The court had invoked the basic structure doctrine to strike down an amendment that was specifically designed to protect the democratic integrity of elections, on the grounds that democratic values required accountability of the executive to Parliament, even though the non-accountability of the caretaker executive to

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an elected Parliament was precisely what made it useful as a mechanism for ensuring electoral fairness. Critics argued that the court had elevated a formal conception of parliamentary accountability over the substantive democratic value of genuinely competitive elections.

The 2011 judgment was also controversial for the circumstances of its delivery. The court issued a short order summarizing its conclusions in June 2011, but the full written judgment was not published until more than a year later. In the meantime, the Parliament, acting on the basis of the short order, enacted the Fifteenth Amendment to the Constitution, which among other things abolished the caretaker government system. When the full judgment was eventually published, it was found to contain significant differences from what the short order had suggested, and the Parliament's action in legislating on the basis of an incomplete judicial pronouncement was criticized as premature.

The November 2025 short order and March 2026 full judgment took direct aim at the 2011 decision. The reviewing court, led by former Chief Justice Syed Refaat Ahmed, characterized the 2011 judgment as constitutionally defective and as potentially having been influenced by political considerations. The phrase used in the full judgment, describing the abolition of the caretaker system as the "judicial murder of democracy," was striking in its rhetorical force and its explicit assignment of responsibility for subsequent democratic failures to the 2011 court.

28.2 The Basic Structure Doctrine Reaffirmed: Free Elections as a Constitutional Fundamental

The central jurisprudential contribution of the November 2025 and March 2026 judgments is their comprehensive articulation of the basic structure doctrine as applied to the caretaker government question. The reviewing court held, with considerable analytical depth, that the right to free and fair elections is a foundational element of the Bangladesh Constitution's democratic character and is therefore part of the basic structure that cannot be abrogated by constitutional amendment.

This holding develops the basic structure doctrine in a specifically Bangladeshi direction that differs in important respects from both the Indian and German constitutional models. The Indian basic structure doctrine, as articulated in Kesavananda Bharati and subsequent cases, protects features like the supremacy of the Constitution, the democratic character of the state, the separation of powers, and fundamental rights. The German eternity clauses explicitly protect human dignity, the federal structure, and the democratic and social character of the state.

The Bangladesh court's holding adds to this comparative constitutional repertoire the specific claim that the institutional mechanisms necessary to ensure the democratic quality of elections are themselves constitutionally protected. This is a substantive rather than a formal conception of democratic constitutionalism: it holds that the constitution protects not merely the form of democratic governance (periodic elections, parliamentary accountability) but the substantive conditions necessary for those forms to produce genuine democratic outcomes.

This substantive conception of democratic constitutionalism connects to a broader trend in comparative constitutional jurisprudence toward what scholars call "militant democracy" or

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"defensive democracy," the idea that democratic constitutions must be actively defended not merely against explicit authoritarian challenges but against the subtler forms of democratic erosion that have characterized the decline of democracy in many countries in the early twenty-first century. Hungary, Poland, Turkey, and Venezuela are among the most prominent examples of democracies that were formally maintained through elections while being substantively hollowed out through the partisan capture of institutional structures.

The Bangladesh case, particularly the experience of the 2014, 2018, and 2024 elections under the Awami League governments that followed the restoration of the non-caretaker electoral system, provides a vivid illustration of this democratic erosion process. As the March 2026 full judgment notes explicitly, the elections conducted without the caretaker framework were "marred by opposition boycotts and credibility concerns" and contributed to the accumulation of governance legitimacy deficits that eventually triggered the August 2024 uprising. The court's retrospective validation of the caretaker system was thus not merely a technical constitutional correction but an implicit acknowledgment that the 2011 decision had contributed to Bangladesh's democratic crisis.

28.3 Prospective Application and the Problem of Constitutional Timing

One of the most analytically interesting aspects of the November 2025 short order was its decision to apply the restoration of the caretaker system prospectively rather than immediately. The court held that the caretaker provisions would be operative from the next election cycle after the current parliament, meaning that the February 2026 elections (which were held concurrently with the constitutional referendum) would proceed under the interim government led by Professor Yunus rather than under a restored caretaker government.

This prospective application decision was criticized by some constitutional scholars as unprincipled, because it created a peculiar situation in which the court declared the existing constitutional arrangements invalid (or at least constitutionally inferior) while simultaneously declining to enforce the consequences of that declaration. If the caretaker system was required by the basic structure of the constitution, how could elections conducted without it be constitutionally valid?

The court's response to this challenge drew on the doctrine of prospective overruling, which has been developed in several constitutional systems to address situations where a constitutional court changes existing legal doctrine in ways that would create chaos or injustice if applied retroactively. In the American constitutional tradition, the doctrine was articulated most clearly in the context of criminal procedure decisions: when the Supreme Court establishes a new constitutional rule, it sometimes holds that the rule applies only to future cases and not to convictions that were final before the new rule was announced.

The Bangladesh court adapted this doctrine to the constitutional amendment context, holding in effect that the restoration of the caretaker system could not be applied to the elections that were already scheduled and for which the electoral machinery had been established on the assumption of the existing framework. The argument that practical necessity and reliance interests justified prospective rather than retroactive application was not implausible, but it did raise the question

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that the iconnectblog commentary identified: whether the court's reasoning was jurisprudentially grounded or was instead responsive to political circumstances, specifically the desire to avoid disrupting the scheduled elections under the Yunus government.

This question about the relationship between judicial reasoning and political context is one of the deepest and most difficult in constitutional theory. Courts are not islands of pure reason isolated from political reality; they are institutions embedded in political systems, dependent on those systems for their resources and their enforcement capacity, and aware of the political consequences of their decisions. Complete judicial independence from political context is impossible in any legal system. The question is not whether courts are influenced by political context but whether their engagement with political context is principled, in the sense of being governed by transparent jurisprudential considerations rather than by partisan preference or institutional self-interest.

28.4 Implications for the Legacy of the Fakhruddin Period

The November 2025 and March 2026 judgments have direct implications for the assessment of the Fakhruddin period's constitutional legacy. By restoring the caretaker system and characterizing the 2011 abolition as a constitutional error, the court has implicitly affirmed the constitutional legitimacy of the 2007 to 2008 caretaker arrangement, at least to the extent that the Thirteenth Amendment provided the formal basis for that arrangement.

This implicit affirmation does not, of course, resolve the more specific questions about the legitimacy of the emergency declaration, the scope of the government's legislative authority under the ordinance power, or the procedural fairness of the anti-corruption campaign. These questions remain contested and will continue to be debated in Bangladesh's legal scholarship and political discourse.

But the court's judgment does establish a broader constitutional framework within which the Fakhruddin period's significance can be assessed. The judgment affirms that the caretaker system, far from being a constitutional anomaly, was a constitutional necessity given the specific characteristics of Bangladesh's political culture and the consistent failure of partisan governments to conduct fair elections. If this affirmation is correct, then the caretaker government that Fakhruddin Ahmed led was not merely a tolerated deviation from constitutional normalcy but an attempt to fulfill one of the constitution's most fundamental commitments, even if the means employed were imperfect and some of the specific actions taken went beyond what the caretaker mandate strictly required.

CHAPTER TWENTY-NINE: INTERNATIONAL LAW DIMENSIONS: HUMAN RIGHTS, SOVEREIGNTY, AND THE INTERNATIONAL FRAMEWORK FOR TRANSITIONAL GOVERNANCE

29.1 The International Human Rights Framework and the Emergency Period

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Bangladesh's international human rights obligations provided an important external framework for evaluating the conduct of the Fakhruddin government, both during the emergency period and in the context of the December 2008 elections. Understanding these obligations and their relationship to Bangladesh's domestic constitutional order is essential for a comprehensive assessment of the government's legal record.

Bangladesh became a party to the International Covenant on Civil and Political Rights in 2000, accepting obligations to respect and ensure the civil and political rights of all individuals within its territory and subject to its jurisdiction. The Covenant's rights include freedom from arbitrary detention (Article 9), the right to a fair trial (Article 14), freedom of expression (Article 19), freedom of assembly (Article 21), freedom of association (Article 22), and the right to participate in political life (Article 25). These rights are generally considered non-waivable in their core content, though many are subject to limitations that can be imposed by law in pursuit of legitimate objectives.

The Covenant explicitly permits states parties to derogate from most of their obligations "in time of public emergency which threatens the life of the nation," subject to the requirements that the emergency be officially proclaimed, that the measures taken are "strictly required by the exigencies of the situation," and that the measures are consistent with other international law obligations and do not involve discrimination on grounds of race, color, sex, language, religion, or social origin. Certain rights are explicitly non-derogable, including the right to life, the prohibition of torture, the prohibition of slavery, and certain core due process protections.

Bangladesh notified the Secretary-General of the United Nations of the declaration of emergency in accordance with the requirements of Article 4(3) of the Covenant. This notification created an official record of Bangladesh's derogation claim and subjected it to the scrutiny of the Human Rights Committee, which could examine whether the measures taken were strictly required by the exigencies of the situation.

The Human Rights Committee's assessment of Bangladesh's derogation, expressed through various communications and in its monitoring of Bangladesh's compliance with Covenant obligations, was generally critical of the scope and duration of the emergency measures. The Committee expressed concern about the detention of persons without charge, the limitations on judicial review of detentions, the restrictions on political activity and media freedom, and the due process issues in the anti-corruption prosecutions. These concerns were consistent with the Committee's general approach to emergency derogations, which has emphasized that the "strictly required" test should be interpreted narrowly and that even in genuine emergencies, states must demonstrate that each specific derogation measure is necessary to address the emergency rather than merely convenient.

29.2 The Role of International Financial Institutions: The IMF, World Bank, and Governance Conditionality

The role of the IMF and World Bank during the Fakhruddin period was significant both for the economic management of the transition and for the broader governance agenda. Both institutions had developed, by 2007, extensive frameworks for engaging with governance issues in their

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client countries, frameworks that reflected an intellectual evolution in development economics from a focus on technical policy parameters to a recognition that governance quality was a primary determinant of development outcomes.

The IMF's engagement with Bangladesh during the caretaker period was primarily focused on macroeconomic stability, working with the government to maintain fiscal discipline and exchange rate stability. The Fund's annual Article IV consultations and the ongoing dialogue with Bangladesh Bank provided important external anchors for the government's macroeconomic management, both constraining irresponsible fiscal policy and providing international credibility for the government's economic management.

The World Bank's engagement was broader, encompassing not merely economic policy but institutional governance more generally. The Bank had, through its governance work in the 1990s and 2000s, developed a framework that emphasized the importance of institutional quality, rule of law, control of corruption, and government effectiveness as determinants of development outcomes. This framework, reflected in the Worldwide Governance Indicators that the Bank published annually, provided both analytical tools for assessing governance quality and a normative framework that informed the Bank's policy engagement with client governments.

The relationship between international financial institution conditionality and national sovereignty has been one of the most controversial issues in the literature on development finance. Critics of conditionality argue that it represents a form of external interference in the domestic governance of developing countries, imposing policy prescriptions developed in Washington on countries whose conditions and preferences may be very different, and doing so through the leverage of financial necessity rather than genuine persuasion. Defenders of conditionality argue that it addresses genuine governance failures, that the evidence that good governance promotes development is strong, and that the alternative of unconditional financing enables bad governance.

The Fakhruddin government's own experience provides a nuanced perspective on this debate. The IMF framework and World Bank engagement were, in the government's assessment, useful resources rather than burdensome constraints. Fakhruddin Ahmed's own extensive World Bank background meant that he understood the Bank's frameworks and priorities deeply, and could engage with them as an intellectual equal rather than as a passive recipient of external advice. The IMF arrangement provided external support for the macroeconomic discipline that the government wished to maintain anyway. And the international credibility that IMF and World Bank engagement provided was an important resource in maintaining donor support for the transition period.

29.3 The United Nations and Electoral Standards: Norm Development and Implementation

The United Nations framework for democratic governance and electoral standards provided an important normative context for the Fakhruddin government's electoral reform agenda. The UN's engagement with electoral processes has developed significantly since the early 1990s, when the end of the Cold War created conditions for a more active international role in supporting democratic transitions, and it has produced a substantial body of electoral standards, guidelines,

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and technical assistance frameworks that informed the design and implementation of Bangladesh's electoral reforms.

The UNDP's Electoral Assistance Division has been a significant source of technical and financial support for election management in developing countries, including Bangladesh, providing assistance with voter registration, election administration training, and electoral dispute resolution. The UN's engagement with Bangladesh's electoral reform was particularly intensive during the Fakhruddin period, as the international community invested heavily in supporting the credibility of the December 2008 elections.

The normative framework within which the UN's electoral assistance operates is defined primarily by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and a series of UN General Assembly resolutions and declarations that have elaborated the requirements for genuine elections. These instruments establish that genuine elections require, at minimum: universal suffrage with equal voting rights, secret ballots, periodic elections conducted in an environment of genuine political competition, effective legal protections for freedom of expression, assembly, and association, and independent electoral administration.

The application of these standards to the Bangladesh situation in 2007 to 2008 raised difficult questions about the relationship between the transitional governance framework and the substantive requirements for democratic elections. The caretaker government's restrictions on political activity during the emergency period, its detention of political leaders, and its anti-corruption campaign against major party figures all raised questions about whether the conditions for genuine electoral competition were being maintained. The international community's overall assessment, reflected in the positive judgments of the December 2008 elections by major observer missions, was that despite these concerns, the elections met the basic standards of credibility. This assessment remains controversial, particularly among those who argue that the prior restrictions on political activity had compromised the level playing field that free elections require.

CHAPTER THIRTY: THE CONSTITUTIONAL REFORM LEGACY: FROM THE FAKHRUDDIN PERIOD TO THE JULY CHARTER

30.1 The Constitutional Reform Commissions of 2024 to 2025: Continuity and Innovation

The constitutional reform process that Bangladesh undertook after the August 2024 uprising and the formation of the interim government under Professor Muhammad Yunus represents, in many respects, the resumption of a reform agenda that the Fakhruddin period had begun but could not complete. Understanding the continuities and differences between these two reform episodes provides important analytical perspective on the long-term constitutional evolution of Bangladesh.

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The Fakhruddin government's reform agenda was, as we have seen throughout this volume, focused primarily on the specific institutional failures that had produced the political crisis of 2006 to 2007: the corruption of the electoral system, the lack of judicial independence, the absence of effective anti-corruption enforcement, and the weakness of institutional accountability mechanisms more generally. These were important reforms, but they operated within the existing constitutional framework, seeking to improve the functioning of existing institutions rather than to redesign the constitutional architecture itself.

The reform commissions established by the Yunus government in October 2024 had a more ambitious mandate: a comprehensive review of Bangladesh's constitutional order with the goal of identifying structural changes that would address not merely the specific failures of recent years but the deeper constitutional vulnerabilities that had allowed democratic backsliding to occur repeatedly throughout Bangladesh's history.

The eleven reform commissions covered the full range of constitutional and governance institutions: the constitution itself, the election commission, the judiciary, the anti-corruption commission, the public administration, the police, the media, the health system, the education system, women's affairs, and local government. This breadth of coverage reflected a comprehensive diagnosis of governance failure that went far beyond what the Fakhruddin period's more targeted reforms had addressed.

The constitutional reform commission's recommendations, which informed the July Charter of 2025, included proposals for bicameralism, term limits for the Prime Minister, enhanced presidential powers, strengthened fundamental rights protections, reformed constitutional amendment procedures, and a new caretaker government mechanism. Several of these proposals were directly responsive to the constitutional failures that the Fakhruddin period's experience had illuminated.

30.2 The July National Charter: Constitutional Consensus and Institutional Design

The July National Charter of 2025, endorsed by thirty-three political parties and signed on November 17, 2025, represented the most ambitious attempt at constitutional redesign in Bangladesh since the original 1972 constitution. The Charter's proposals for constitutional reform were extensive, covering virtually every dimension of the constitutional order, and they were designed to address the structural vulnerabilities that successive crises had revealed.

The Charter's proposal for a reformed caretaker government mechanism was directly responsive to the lessons of the 2007 to 2008 experience and its aftermath. Rather than the automatic appointment mechanism of the Thirteenth Amendment (which had proven vulnerable to manipulation through judicial appointment sequencing), the Charter proposed a five-member selection committee comprising representatives of the ruling party, the main opposition, and the second opposition, supplemented by the presiding officers of parliament. This design attempted to balance the need for neutrality with the requirement for accountability, creating a mechanism that would be broadly acceptable to the major political actors rather than depending on the automatic application of a rule that could be manipulated.

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The proposed term limit of ten years for the Prime Minister directly addressed the concentration of power in executive leadership that had characterized the Hasina years. The lesson that Bangladesh had drawn from fifteen years of single-party governance was that even genuinely democratic electoral systems could produce authoritarian outcomes if the leader who won elections was permitted to entrench themselves indefinitely. Term limits, which are a standard constitutional safeguard in many presidential systems, were adapted to Bangladesh's parliamentary context as a response to this specific vulnerability.

The proposed bicameralism, with a proportionally elected one-hundred-member upper house whose approval would be required for constitutional amendments, was designed to address the problem of parliamentary omnipotence that had allowed the Fifteenth Amendment's abolition of the caretaker system to be enacted by a government with a parliamentary supermajority but without genuine political consensus. By requiring approval from a proportionally constituted upper house, the Charter's proposal would make future constitutional changes more dependent on broad political consensus rather than mere parliamentary arithmetic.

These institutional design innovations can be analyzed through the lens of what constitutional scholars call "constitutional precommitment," the strategy of using constitutional constraints to bind future political actors to rules that prevent them from taking certain self-serving actions. James Madison's theory of constitutional design, articulated in the Federalist Papers, rested fundamentally on the idea that constitutions work by setting up institutional structures in which the ambitions of one political actor check the ambitions of others, preventing any single actor from accumulating the power necessary for arbitrary governance. The July Charter's proposals can be read as a Madisonian response to the specific failures of Bangladesh's constitutional order, redesigning institutional relationships to make the recurrence of the specific pathologies that had produced Bangladesh's democratic crises more difficult.

30.3 The February 2026 Elections and Referendum: Assessing the Constitutional Transition

The elections of February 12, 2026, which combined parliamentary elections with the constitutional referendum, represent the culmination of the transition process that the Fakhruddin government's 2007 to 2008 caretaker period had set in motion. The elections resulted in a decisive victory for the Bangladesh Nationalist Party, which secured a two-thirds majority in Parliament, and the referendum produced a sixty-eight percent "Yes" vote on a sixty percent turnout, endorsing the July Charter's constitutional reform proposals.

The conjunction of the parliamentary elections and the constitutional referendum on the same day was itself constitutionally controversial. The ballot's bundled format, which required voters to approve or reject the entire July Charter package without the ability to endorse some proposals while rejecting others, was criticized as an obstacle to genuine popular deliberation on the specific constitutional changes proposed. The Bangladesh Nationalist Party's refusal to have its newly elected MPs take the second oath as members of the Constitutional Reform Assembly further complicated the implementation of the referendum's mandate.

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The electoral law framework governing the February 2026 elections was itself a product of the reforms that the Fakhruddin period had initiated and that subsequent governments had modified. The biometric voter registration system, introduced during the caretaker period, was still in use (though substantially upgraded), and it provided the foundational database of registered voters that the election management system depended on. The Election Commission, reformed under the Yunus government to incorporate appointment process improvements, had a stronger institutional foundation than it had enjoyed under the elections of 2014, 2018, and 2024.

International observer missions gave broadly positive assessments of the February 2026 elections, noting significant improvements over the non-competitive elections of the preceding decade and characterizing the elections as the most genuinely competitive Bangladesh had seen since 2008. This assessment, while qualified by concerns about certain aspects of the campaign environment and the referendum's bundled format, was an important validation of the institutional reforms that the caretaker period had initiated.

The result of the BNP's landslide victory, following the Awami League's fifteen years of governance, was itself a demonstration of the kind of electoral accountability that the caretaker system was designed to enable. The peaceful transfer of power from the Yunus-led interim government to the newly elected BNP government, with the AL consigned to opposition, represented a functioning democratic transition that Bangladesh had not experienced since 2009. It was, in an important sense, the realization of the democratic promise that the Fakhruddin government's transitional mandate had been designed to fulfill.

30.4 Remaining Constitutional Challenges: From Legacy to Future

The February 2026 elections and the constitutional referendum have not resolved all of Bangladesh's constitutional challenges. Several significant issues remain contested, and their resolution will determine whether the constitutional reform process produces the durable improvements in governance quality that its architects intended.

The implementation of the referendum's mandate is the most immediate challenge. The "Yes" vote is characterized in the legal instruments as politically binding but not legally self-executing, meaning that the newly elected Parliament must take affirmative legislative action to convert the referendum's mandate into constitutional amendments. The BNP's refusal to take the second oath as Constitutional Reform Assembly members has created uncertainty about the mechanism through which this conversion will occur, and the relationship between the Parliament's legislative powers and the Constitutional Reform Assembly's contemplated constituent powers remains unresolved.

The constitutional litigation still in progress adds further complexity. The High Court Division's judgment striking down key provisions of the Fifteenth Amendment was still pending before the Appellate Division in March 2026, and the relationship between that litigation, the November 2025 Appellate Division judgment, and the February 2026 referendum results creates a layered constitutional situation of considerable complexity. The new Appellate Division bench that will hear the Fifteenth Amendment appeals faces the task of navigating these competing

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constitutional authorities, a task that will require both technical legal skill and broader constitutional statesmanship.

The institutional reforms of the Yunus government period, including the 133 ordinances that the new Parliament must review, the Supreme Court Secretariat Ordinance, and the Judicial Appointment Ordinance, require legislative confirmation or modification by the elected Parliament. The quality of the parliamentary review process will be an important indicator of whether Bangladesh's democratic governance has genuinely improved, both in terms of substantive legislative outcomes and in terms of the deliberative quality of the parliamentary process itself.

The lessons of the Fakhruddin period remain directly relevant to these ongoing constitutional challenges. The fundamental insight of the 2007 to 2008 caretaker experience was that institutional reforms, however carefully designed, are not self-implementing: they require sustained political will, adequate resources, competent and committed officials, and an external accountability environment that creates incentives for reform implementation rather than reform evasion. Creating this environment, under the conditions of genuinely competitive democratic politics that the February 2026 elections have restored, is the fundamental governance challenge that Bangladesh's current constitutional moment presents.

CHAPTER THIRTY-ONE: PHILOSOPHICAL SYNTHESIS: LEGITIMACY, LAW, AND THE PROBLEM OF CONSTITUTIONAL CRISIS

31.1 The Jurisprudential Problem of Legitimacy in Constitutional Crisis

Throughout this volume, we have repeatedly encountered the central jurisprudential problem of the Fakhruddin period: the tension between formal legal authority and substantive political legitimacy, between the question of whether the government's actions were authorized by valid legal instruments and the question of whether they were justified by the broader normative commitments that the constitutional order embodies.

This tension is not peculiar to Bangladesh; it runs through the entire tradition of political and legal philosophy as one of the most fundamental and most persistently difficult questions about the relationship between law and political life. The positivist tradition, associated with Bentham, Austin, and Hart, insists on the separation of law from morality: what the law is, is a question of social fact about the rules that officials use and enforce, not a question about whether those rules are morally justified. The natural law tradition, from Aquinas through Finnis to contemporary natural law theorists, insists that law that is radically unjust fails to have the obligatory character of genuine law and may be resisted without violating the obligations that genuine law creates.

H.L.A. Hart's sophisticated version of legal positivism, articulated in The Concept of Law, attempted to acknowledge the moral dimensions of legal systems without abandoning the fundamental positivist insight that law can be identified by reference to social facts. Hart's concept of the "internal point of view," the perspective of those who accept the rules of the legal

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system as standards of conduct rather than merely as threats to be avoided, introduced a dimension of normative engagement with legal rules that pure positivism had lacked. But Hart's framework still maintained a fundamental distinction between legal validity (determined by the rule of recognition, the social rule that identifies what counts as law in a given legal system) and moral justification (a separate question requiring moral rather than legal analysis).

Lon Fuller's critique of positivism, articulated in The Morality of Law and in his famous exchange with Hart in the Harvard Law Review, argued that law and morality were not as separable as positivists claimed. Fuller maintained that law had an "inner morality" consisting of certain formal requirements (generality, promulgation, non-retroactivity, clarity, consistency, possibility of compliance, stability, and congruence between official action and declared rules) that were necessary for a legal system to function as law at all. A legal system that systematically violated these formal requirements was not merely a bad legal system but not really a legal system at all, in the relevant sense.

Ronald Dworkin's more radical critique of positivism argued that legal interpretation necessarily involves moral reasoning, and that the distinction between law as it is and law as it should be is not as sharp as positivists claim. Dworkin's theory of law as "integrity" holds that judges should interpret legal rules not merely by reference to their literal text or their historical enactment but by reference to the principles that provide the best justification for the whole body of law, including the constitutional order. On this view, the question of what the Fakhruddin government was legally authorized to do cannot be answered without also engaging with the question of what constitutional principles the Bangladesh Constitution embodies and how those principles best explain and justify the specific constitutional arrangements.

Applied to the Bangladesh situation, these different jurisprudential frameworks yield different analytical emphases. The positivist asks: was the emergency declaration formally valid under Article 141A? Were the ordinances properly enacted under Article 93? Were the special courts established by legislation that met the formal requirements of valid law-making? The natural law theorist asks: was the government's conduct consistent with fundamental principles of justice and respect for human rights? The Dworkinian asks: what interpretation of Bangladesh's constitutional order, viewed as a whole, best fits and justifies both the specific constitutional provisions governing caretaker government and emergency powers and the broader principles of democratic governance and rule of law that the constitution embodies?

Each of these questions is illuminating, and each reveals different aspects of the complex legal reality of the Fakhruddin period. Taken together, they suggest that the period cannot be adequately assessed by reference to any single jurisprudential framework, but requires the kind of pluralistic, multi-dimensional analysis that this textbook has sought to provide.

31.2 The Tension Between Democracy and Constitutionalism: The Bangladesh Case

One of the deepest themes running through this entire textbook is the tension between democracy and constitutionalism, between the principle that the people should govern themselves through their elected representatives and the principle that certain fundamental values and rights should be protected from democratic majorities. This tension, which the political philosopher Giovanni

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Sartori identified as the "fundamental dilemma of constitutionalism," is particularly acute in Bangladesh's constitutional history and in the specific constitutional questions raised by the Fakhruddin period.

Democracy, in its most straightforward sense, means the rule of the people through their elected representatives. Constitutional democracy limits this rule by establishing certain rights and principles that cannot be overridden even by democratic majorities. The tension arises when democratic majorities use their political power to undermine the conditions for future democratic competition: when a ruling party uses its majority to change the electoral rules in its favor, to suppress the opposition, to capture independent institutions, or to extend its own tenure beyond what genuinely competitive elections would produce.

Bangladesh's experience under the Hasina governments of 2009 to 2024 was a case study in this process of democratic erosion through formally democratic means. The Fifteenth Amendment was enacted by a parliament with a large majority, through formally valid constitutional procedures. But its abolition of the caretaker system, combined with the subsequent manipulation of the electoral administration, the capture of the judiciary, and the accumulation of power in the executive, produced a situation in which elections continued to be held but ceased to serve their essential democratic function of allowing the people to hold their government accountable.

The caretaker government system that the Fakhruddin period represented was, in this context, not merely a convenient electoral mechanism but a constitutional safeguard against the specific form of democratic erosion to which Bangladesh was particularly vulnerable. By removing the incumbent government from control of the electoral administration, the caretaker system addressed a specific institutional vulnerability that Bangladesh's political culture and weak institutional environment created. The March 2026 Supreme Court judgment's characterization of this system as part of the constitutional basic structure reflects a sophisticated understanding of this function and of the relationship between formal constitutional provisions and the substantive conditions for democratic governance.

31.3 The Technocratic Paradox: Expertise, Democracy, and Legitimate Governance

The appointment of Fakhruddin Ahmed, a technocrat rather than a politician, as the head of Bangladesh's caretaker government raises a broader question about the relationship between technical expertise and democratic legitimacy in governance. This question, which has become increasingly pressing in the contemporary world as the complexity of governance challenges seems to require increasing technical specialization, is one of the central themes of contemporary political theory.

The technocratic ideal, in its strongest form, holds that governance problems are fundamentally technical problems that can be solved through the application of expert knowledge, and that the primary qualification for public office is not the popular support expressed through elections but the expertise necessary to solve the problems at hand. This ideal, which found expression in the Weberian theory of bureaucratic rationality, the Wilsonian theory of public administration, and the mid-twentieth century enthusiasm for expert planning and policy, has been consistently

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challenged by democratic theory on the grounds that it fails to account for the role of values, interests, and political conflict in governance.

The democratic critique of technocracy argues that governance questions are not purely technical but are fundamentally political: they involve choices about which values to prioritize, whose interests to serve, and what kind of society to create. These choices cannot be delegated to experts because experts have no special authority on matters of value; only democratic processes that give equal voice to all citizens can legitimately make these choices. The attempt to substitute expert judgment for democratic deliberation on matters of value is, on this view, not merely undemocratic but incompetent, because it applies the wrong kind of reasoning to the wrong kind of question.

Fakhruddin Ahmed's tenure as Chief Adviser illustrated both the genuine value that technical expertise brings to governance and the limits of technocratic governance in a democratic system. His economic competence, his understanding of international financial systems, and his ability to manage Bangladesh's complex donor relationships were genuine assets that contributed to the stable macroeconomic environment of the transition period. His commitment to institutional reform, grounded in a sophisticated understanding of why institutions matter for development outcomes, produced several reforms (particularly the judicial separation and the voter registration system) that had lasting positive effects.

But his technocratic orientation also had limitations as a basis for political leadership. The anti-corruption campaign, which was the government's most politically consequential initiative, required not merely technical competence but political judgment about which cases to pursue, how to balance the requirements of legal process against the demands of public legitimacy, and how to navigate the complex political economy of corruption in a deeply polarized society. These were not questions that economic theory or development economics could answer, and the mixed record of the campaign reflected the limits of applying technocratic frameworks to fundamentally political problems.

The broader lesson may be that democratic governance in complex societies requires both technical expertise and political wisdom, and that neither alone is sufficient. The challenge of constitutional design is to create institutional arrangements that harness technical expertise while maintaining democratic accountability, that allow experts to contribute their knowledge to governance decisions without substituting their judgment for democratic deliberation on matters of value. The constitutional reform agenda of 2025 to 2026, with its emphasis on independent constitutional bodies, reformed appointment processes, and enhanced accountability mechanisms, can be read as an attempt to design institutions that achieve this balance more successfully than Bangladesh's previous institutional arrangements had managed.

31.4 Conclusion: The Fakhruddin Period in Constitutional History

The legal and constitutional legacy of the Fakhruddin Ahmed period is complex, contested, and still unfolding in 2026. It cannot be summarized in a simple positive or negative assessment, because it simultaneously embodied constitutional principle and constitutional deviation, genuine

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institutional reform and significant rights violations, successful transition management and imperfect democratic preparation.

What can be said with confidence is that the period was a crucible in which many of the most fundamental questions of Bangladeshi constitutional law were tested and refined, questions about the nature of constitutional authority, the limits of emergency powers, the proper scope of caretaker government, the requirements of procedural fairness in anti-corruption enforcement, and the relationship between formal legal authority and substantive democratic legitimacy.

The March 2026 Supreme Court judgment, with its explicit characterization of free and fair elections as a basic structure requirement and its frank acknowledgment that the 2011 judgment had contributed to democratic decay, represents a significant retrospective endorsement of the constitutional rationale for the caretaker system even as it leaves many of the specific legal controversies of the Fakhruddin period unresolved. The February 2026 elections and the constitutional referendum, with their imperfect but broadly credible process and their strong popular engagement, represent the realization, after years of democratic backsliding, of the democratic transition that the caretaker period was designed to enable.

Fakhruddin Ahmed's place in Bangladesh's constitutional history is thus neither that of a constitutional hero nor that of a constitutional villain but that of a figure who embodied the genuine dilemmas of governance in a society struggling to build the institutional foundations for sustainable democratic life. His biography is, in this sense, not merely the biography of one man but a biography of the constitutional challenges that Bangladesh and many similar societies face in trying to reconcile the demands of democratic governance with the realities of weak institutions, deep political polarization, and the persistent temptations of authoritarian shortcuts.

Part Four of this textbook will extend this analysis into the comparative constitutional domain, examining in detail the experience of other South Asian and developing country constitutional systems with caretaker governance, transitional justice, and democratic consolidation, drawing on the theoretical frameworks developed in this volume to illuminate both the specific features of the Bangladesh experience and its broader significance for constitutional theory and practice.

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Part Four: Comparative Constitutional Frameworks, Democratic Transitions, and the International Dimensions of the Fakhruddin Period will follow in the next volume of this series.

PART FOUR: COMPARATIVE CONSTITUTIONAL FRAMEWORKS, DEMOCRATIC TRANSITIONS, AND THE INTERNATIONAL DIMENSIONS OF THE FAKHRUDDIN PERIOD

Volume Four: Bangladesh in the World: Precedents, Parallels, and the Global Grammar of Democratic Transition

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FOREWORD TO PART FOUR

The preceding three parts of this textbook have explored the Fakhruddin Ahmed period through the lenses of biography, development economics, and constitutional law, engaging primarily with Bangladesh's domestic institutions, traditions, and jurisprudential debates. Part Four widens the analytical lens considerably. It situates the Fakhruddin period within a richly textured comparative constitutional framework, examining how other societies, particularly in South Asia and the broader Global South, have grappled with the same problems that Bangladesh faced in 2007: the collapse of a partisan electoral system, the need for transitional governance that can maintain order while restoring institutional legitimacy, the challenge of conducting credible elections in deeply polarized political environments, and the question of how international institutions and norms interact with domestic constitutional processes during periods of political crisis.

The comparative method in constitutional law is not merely about finding analogies. It is about understanding the range of institutional choices available to societies facing particular governance challenges, about identifying the conditions under which different institutional designs tend to succeed or fail, and about drawing on the accumulated experience of multiple societies to enrich the analysis of any particular case. When we examine Bangladesh's caretaker government system in the light of Pakistan's experience with caretaker arrangements, Sri Lanka's complex relationship between constitutional design and ethnic politics, Nepal's post-conflict constitutional transition, South Africa's transformative constitutionalism, and the Latin American experience of democratic consolidation after military rule, we do not find simple templates to be copied but we do find illuminating parallels, contrasts, and analytical frameworks that deepen our understanding of the specific choices that Bangladesh has made and the specific challenges it continues to face.

This Part is organized across eight chapters. It begins with the broader theoretical frameworks for comparative analysis of transitional governance, moves through the South Asian comparative material, examines the role of international institutions and international law, engages with the theory of democratic consolidation, and concludes with a comprehensive assessment of the Fakhruddin period's significance in the light of all this comparative analysis. Throughout, it

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maintains the engagement with recent developments, drawing on the latest academic and policy literature from 2024, 2025, and 2026 to ensure that the analysis reflects the current state of thinking in the field.

CHAPTER THIRTY-TWO: TRANSITIONAL GOVERNANCE IN COMPARATIVE PERSPECTIVE: THEORETICAL FRAMEWORKS AND TYPOLOGIES

32.1 Defining Transitional Governance: The Spectrum from Caretaker to Transitional Administration

The concept of transitional governance covers a wide spectrum of governmental arrangements, from the relatively limited caretaker government that holds office for a few weeks between an election being called and a new government being formed, to the comprehensive transitional administrations that have governed post-conflict societies for years while their institutions are rebuilt from the ground up. Understanding where Bangladesh's caretaker government system falls on this spectrum, and what theoretical frameworks are most appropriate for analyzing it, is the first analytical task of this comparative investigation.

Political scientists and constitutional lawyers have developed several overlapping typologies of transitional governance. One influential typology, developed by the comparative constitutionalist Yash Ghai, distinguishes between three types of constitutional transitions: those produced by negotiated settlements between existing elites, those produced by imposed constitutional frameworks (typically by external actors), and those produced by constitutional moments of popular mobilization and democratic design. Each type produces different constitutional dynamics, different patterns of institutional design, and different challenges for implementation.

Bangladesh's 2007 to 2008 caretaker arrangement does not fit neatly into any of these categories. It was neither a negotiated elite settlement (the political parties were not party to the arrangement; indeed, their leaders were being prosecuted) nor an externally imposed framework (while the military and international community played significant roles, the formal constitutional basis was provided by the existing Thirteenth Amendment) nor a constitutional moment of popular democratic design (the caretaker government was not elected and claimed legitimacy primarily from institutional expertise and the necessity of the moment rather than from popular mandate).

This ambiguity of type is itself analytically significant. The Fakhruddin government represented what might be called a "technocratic transition," a form of transitional governance in which authority is exercised not by elected politicians, military officers, or representatives of major social forces, but by individuals whose claim to authority rests primarily on professional expertise and institutional credibility. Technocratic transitional governance has become increasingly common in the early twenty-first century, appearing in contexts as varied as Greece and Italy during the European debt crisis, when technocratic governments were formed to manage economic emergencies, and in several African states where internationally-supported technocratic arrangements have attempted to oversee contested political transitions.

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The comparative literature on technocratic governance identifies both the advantages and the limitations of this model. The advantages include its relative insulation from the partisan conflicts that prevent elected governments from addressing difficult governance problems, its ability to draw on international expertise and credibility, and its orientation toward long-term institutional improvement rather than short-term political advantage. The limitations include its democratic deficit, its potential to be captured by particular interests masquerading as neutral expertise, and its inability to build the popular coalitions and social support necessary for sustained institutional reform.

32.2 The Theory of Democratic Consolidation: What Does It Require?

The concept of democratic consolidation, which has been central to the comparative politics literature on regime transitions since the early 1990s, asks what it takes for a newly (re)established democratic system to become sufficiently stable and self-sustaining that its continuation is no longer in serious doubt. The answer to this question has been debated extensively, with scholars offering a range of criteria ranging from the minimalist (democratic consolidation requires only that elected governments transfer power peacefully when they lose elections) to the maximalist (consolidation requires not merely institutional stability but a fundamental transformation of political culture, civil society, and economic structures).

Juan Linz and Alfred Stepan's influential framework, developed in their book Problems of Democratic Transition and Consolidation, identifies five arenas that must all function according to democratic principles for a democracy to be considered consolidated: the election of government through competitive elections, the rule of law applied through a functioning state apparatus, a civil society that operates independently of the state, an economic society governed by democratic and market principles, and a democratic spirit in the political society that accepts the constraints of democratic competition. The simultaneous improvement of all five arenas is extraordinarily demanding, and Linz and Stepan's framework is partly designed to explain why democratic consolidation is so frequently incomplete.

Applied to Bangladesh in the aftermath of the Fakhruddin period, this framework reveals a deeply uneven picture. The competitive elections dimension improved significantly with the December 2008 elections, widely assessed as the most credible Bangladesh had held in many years, and again with the February 2026 elections following the restoration of genuinely competitive politics. But the rule of law dimension remained severely compromised throughout, with the judiciary subordinated to executive control, anti-corruption enforcement selective and politicized, and the criminal justice system unable to provide consistent and impartial justice. The civil society dimension was mixed, with a vibrant NGO sector but significant state harassment of independent media and civil society organizations. The economic society dimension showed continuous improvement in macroeconomic management but persistent problems of corruption and crony capitalism in the allocation of economic opportunities. And the political society dimension showed the most persistent problems, with both major parties consistently demonstrating a winner-take-all political culture that treated democratic competition as a zero-sum contest rather than a cooperative enterprise.

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This multi-dimensional analysis suggests that the Fakhruddin period's contribution to democratic consolidation was real but limited. It improved the elections dimension significantly, contributed to the rule of law dimension through judicial separation and the voter registration system, and strengthened some aspects of the economic society dimension through its macroeconomic management. But it did not, and arguably could not, address the deeper political culture problems that Linz and Stepan's framework identifies as central to genuine democratic consolidation.

32.3 Democratic Backsliding and Competitive Authoritarianism: Theoretical Context

The experience of Bangladesh under the Awami League governments of 2009 to 2024 fits the theoretical model that Steven Levitsky and Lucan A. Way developed in their concept of "competitive authoritarianism," and that was later refined and extended by Anna Grzymala-Busse, Milan Svolik, and others in the growing literature on democratic backsliding.

Competitive authoritarianism refers to a regime type in which democratic institutions exist and elections are held regularly, but where the incumbent government systematically violates the norms of democratic competition by using state resources, administrative machinery, legal harassment of opponents, media control, and judicial manipulation to ensure that elections reliably produce outcomes favorable to the incumbent. The key distinguishing feature of competitive authoritarian regimes from straightforward authoritarianism is that elections remain the principal mechanism of political succession, even though the playing field is so severely tilted that they cannot produce genuine turnover unless the incumbent's popularity collapses catastrophically.

Bangladesh under Sheikh Hasina's second and subsequent governments (2009 onwards) exhibited the characteristic features of competitive authoritarianism with increasing clarity. The suppression of opposition activity, the use of the legal system to harass opposition politicians, the control of major media outlets, the capture of the Election Commission, the manipulation of the judiciary, and the systematic marginalization of civil society organizations that were perceived as critical of the government all followed the competitive authoritarian playbook with remarkable consistency. The 2014, 2018, and January 2024 elections were each less competitive and less credible than the last, with the January 2024 election being widely characterized as neither free nor fair.

The theoretical significance of the Bangladesh experience for the democratic backsliding literature is considerable. Bangladesh's trajectory from 2009 to 2024 provides one of the clearest and most thoroughly documented cases of democratic backsliding in South Asia, illustrating the specific mechanisms through which elected governments can dismantle democratic institutions from within while maintaining the formal trappings of democratic governance. It also illustrates the limitations of formal institutional safeguards, including constitutional provisions for independent institutions, in environments where the political incentives for institutional capture are strong and the coalitions in favor of institutional independence are weak.

The August 2024 uprising that overthrew the Hasina government represents a theoretically interesting case of what Levitsky and Ziblatt, in their book How Democracies Die, call the

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"guardrails" of democracy reasserting themselves after a period of sustained attack. The uprising was led by students and young people who had grown up entirely under Hasina's governance and who had no personal experience of democratic alternation; their rejection of the system was therefore not nostalgia for an earlier, better democratic Bangladesh but a principled demand for institutional accountability that they had never personally experienced.

The theoretical question this raises is whether popular uprisings of this kind can substitute for the institutional guardrails that formal constitutional design is supposed to provide. The answer that the Bangladesh experience suggests is ambiguous: the uprising succeeded in removing an entrenched government, demonstrating that even competitive authoritarian regimes face limits when their legitimacy collapses sufficiently. But it did not, in itself, produce the institutional transformation necessary for sustainable democratic consolidation, because institutional transformation requires not merely the removal of bad actors but the construction of new institutional arrangements and the cultivation of new political norms.

CHAPTER THIRTY-THREE: THE PAKISTANI EXPERIENCE: CARETAKER GOVERNMENT, MILITARY INTERVENTION, AND THE RECURRING CONSTITUTIONAL CRISIS

33.1 Pakistan's Constitutional History: The Deep Structure of Instability

Pakistan's constitutional history provides the most directly relevant comparative material for understanding Bangladesh's governance challenges, because both states share a colonial legal inheritance, a partition experience, a history of military intervention in democratic governance, and a persistent tension between civilian and military authority that has structured their political development. Understanding the specific ways in which Pakistan's constitutional arrangements have both paralleled and diverged from Bangladesh's illuminates the distinctive features of each country's constitutional trajectory.

Pakistan has had three constitutions since independence: the 1956 constitution (which lasted less than two years before being abrogated by Ayub Khan's military coup in 1958), the 1962 constitution (which established a presidential system that served as the legal framework for Ayub Khan's quasi-authoritarian rule), and the 1973 constitution (which has been the basis of Pakistan's constitutional order since then, though subject to extensive modification through formal amendments and informal subversions). The 1973 constitution established a parliamentary system with a directly elected National Assembly and an indirectly elected Senate, a federal structure with significant provincial autonomy, and a Supreme Court as the apex of the judicial hierarchy.

Like Bangladesh's constitution, Pakistan's has been subject to extensive modification through military intervention. The most significant modifications were the Eighth Amendment of 1985 (which gave General Zia ul-Haq's regime constitutional legitimacy by confirming all acts taken during the military period and by adding an Article 2A making the Objectives Resolution a substantive part of the constitution), and the Seventeenth Amendment of 2003 (which

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legitimated General Musharraf's military takeover and gave the President significant powers over the government). These amendments, like Bangladesh's military-era amendments, fundamentally altered the character of the constitutional order while maintaining its formal continuity.

Pakistan's experience with caretaker governments provides the most directly comparative material for Bangladesh's Thirteenth Amendment system. Pakistan has used caretaker governments to oversee elections since the 1988 elections that followed Zia ul-Haq's death in a plane crash, establishing an informal practice that has been repeated in subsequent electoral cycles. The Pakistani caretaker arrangements have, however, always been less formal than Bangladesh's Thirteenth Amendment system: they lack a constitutional provision establishing the caretaker institution, relying instead on conventions, political agreements, and occasional legislative frameworks.

This informality has been both a strength and a weakness of Pakistan's caretaker system. The strength is flexibility: Pakistan's caretaker arrangements can be adapted to specific political circumstances without requiring formal constitutional amendment. The weakness is instability: without constitutional entrenchment, caretaker arrangements depend on the willingness of the major political actors to cooperate, and this cooperation has frequently broken down when the political stakes are high. The controversy over the selection of caretaker Prime Ministers in the 2013 and 2018 elections, where the major parties could not agree on an acceptable candidate, illustrated this weakness.

Pakistan's 2023 caretaker arrangement, which governed the country for nearly nine months before the February 2024 elections, pushed the limits of caretaker governance far beyond anything that the informal Pakistani convention had contemplated. The caretaker government led by Anwaar-ul-Haq Kakar was not merely a transitional administration overseeing elections but an active policymaker that made significant economic decisions, engaged in international negotiations, and effectively managed the country's governance during a period of intense political and economic crisis. This extended and active caretaker governance has obvious parallels with the Fakhruddin period in Bangladesh, raising similar questions about the constitutional legitimacy of caretaker governments that go beyond their transitional mandate.

33.2 The Doctrine of Necessity in Pakistani Constitutional Law: Implications for Bangladesh

The doctrine of necessity has played a far more prominent role in Pakistani constitutional jurisprudence than in Bangladesh's, and tracing its development and eventual rejection in Pakistani courts provides important comparative insights for understanding both the legal framework of the Fakhruddin period and the broader question of how constitutional systems handle extra-constitutional exercises of power.

The Pakistani Supreme Court first invoked the necessity doctrine in Maulvi Tamizuddin Khan v. Federation of Pakistan (1955), in which the court upheld the Governor-General's dissolution of the Constituent Assembly on grounds of necessity, even though no constitutional provision authorized such dissolution. This judgment, authored by Justice Munir, established the precedent that in situations of constitutional breakdown, courts could validate governmental acts that

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lacked formal constitutional authorization if they were necessary to prevent a greater constitutional catastrophe.

The necessity doctrine was subsequently invoked to validate each of Pakistan's military coups: the Dosso case (1958) validated Ayub Khan's martial law, the Nusrat Bhutto case (1977) validated Zia ul-Haq's martial law, and the Zafar Ali Shah case (2000) validated Musharraf's takeover, each time with the courts dressing up their deference to military power in the language of constitutional necessity. This pattern of judicial validation of military rule was one of the most damaging features of Pakistan's constitutional development, establishing a precedent that removed effective legal constraint on military intervention in democratic governance.

The reversal of this pattern began with the Iftikhar Chaudhry court's increasing assertiveness under Chief Justice Chaudhry from 2007 onwards, and culminated in the Supreme Court's landmark judgment in Sindh High Court Bar Association v. Federation of Pakistan (2009), which explicitly condemned the doctrine of necessity and stated that Pakistani courts would no longer validate military takeovers on necessity grounds. This judgment was constitutionally revolutionary, declaring that Pakistan's constitutional history of judicial capitulation to military power had been legally wrong and that future courts would not repeat it.

The implications of this Pakistani constitutional evolution for Bangladesh are significant. Bangladesh's courts never as explicitly endorsed the necessity doctrine as Pakistani courts had, but the caretaker period's constitutional legitimacy rested in part on a necessity argument: that the extraordinary circumstances of January 2007 justified the appointment of a caretaker government through a procedure that was at best constitutionally ambiguous. The Pakistani experience suggests both the short-term utility of necessity arguments (they allowed the transition to proceed without immediate constitutional challenge) and their long-term danger (they established a precedent that could be used to justify future departures from constitutional normalcy).

The March 2026 full judgment of Bangladesh's Appellate Division, which emphasized constitutional principle over necessity-based pragmatism and articulated a vision of democratic constitutionalism grounded in the basic structure doctrine rather than necessity reasoning, can be seen as Bangladesh's equivalent of the Pakistani necessity-doctrine repudiation. Both judgments represent a judicial commitment to constitutional principle that refuses to validate departures from the constitutional order on grounds of political convenience, even when those departures may have produced acceptable outcomes in the specific instance.

33.3 Pakistan's Anti-Corruption Experience: Accountability Courts and Their Limitations

Pakistan's experience with anti-corruption prosecutions, particularly under the National Accountability Bureau (NAB) and its associated accountability courts, provides important comparative material for evaluating Bangladesh's anti-corruption campaign during the Fakhruddin period. The parallel is striking: both countries established special anti-corruption courts operating under modified procedures to handle the prosecution of major political figures, and in both cases the results were deeply controversial.

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Pakistan's NAB was established by the National Accountability Ordinance of 1999, promulgated by the Musharraf government in the immediate aftermath of its October 1999 coup. The ordinance established a powerful anti-corruption authority with sweeping investigative powers, the ability to detain accused persons for extended periods without formal charges (the practice known as "physical remand"), and the authority to prosecute cases in special accountability courts with simplified procedures. The establishment of the NAB and its accountability courts bore obvious structural similarities to Bangladesh's reconstituted ACC and special courts during the Fakhruddin period.

Pakistan's NAB experience over the following two decades produced a deeply ambiguous record. On one hand, the institution prosecuted many genuinely corrupt political and business figures and obtained convictions that would not have been achieved through the ordinary criminal justice system. On the other hand, NAB became widely perceived as a tool of political manipulation, used selectively against opponents of the military establishment and against civilian politicians who challenged the military's political role. The prosecution of Benazir Bhutto and Nawaz Sharif under NAB in the early 2000s, and the later prosecution of Imran Khan's political opponents after his removal from power in 2022, all generated accusations of politically motivated prosecution that severely damaged NAB's institutional credibility.

The most analytically illuminating parallel with Bangladesh is the fate of NAB prosecutions after changes of government. When the political climate changed, convictions obtained during earlier periods were challenged, reversed, or quietly abandoned in ways that reflected political calculation rather than legal principle. The same pattern was observed in Bangladesh, where many of the convictions obtained during the Fakhruddin period were challenged and in some cases reversed after the 2008 elections brought a new government to power. This pattern of politically-contingent prosecution outcomes is characteristic of anti-corruption enforcement systems that lack genuine institutional independence, and it suggests that the institutional design of both Pakistan's NAB and Bangladesh's ACC was insufficient to insulate the enforcement process from political influence.

The theoretical lesson from both experiences is that effective anti-corruption enforcement requires not merely the formal institutional structures of independent investigation and prosecution but the political conditions that make independence sustainable over time. Institutions that are independent in formal legal terms but dependent on political support for their operational resources and their protection from political retaliation cannot maintain genuine independence when political incentives for their capture are strong. Creating the political conditions for sustained anti-corruption enforcement, which requires a broader transformation of the political incentive structure, is the deeper challenge that both Pakistan and Bangladesh have found most difficult to address.

CHAPTER THIRTY-FOUR: SRI LANKA'S CONSTITUTIONAL EXPERIENCE: ETHNIC CONFLICT, CONSTITUTIONAL DESIGN, AND GOVERNANCE FAILURE

34.1 Sri Lanka's Constitutional History: From Westminster to Executive Presidency

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Sri Lanka's constitutional history offers a different but equally illuminating comparative perspective on the challenges of governance and constitutional design in South Asia. While Bangladesh's primary constitutional challenges have been related to electoral manipulation, military intervention, and systemic corruption, Sri Lanka's deepest constitutional problems have been connected to the management of ethnic diversity, the concentration of executive power, and the relationship between constitutional design and civil conflict.

Sri Lanka inherited a Westminster parliamentary system at independence in 1948, similar in structure to Bangladesh's post-independence constitutional framework. The 1948 constitution established responsible government with a Prime Minister accountable to a Parliament elected by universal suffrage, a largely ceremonial Governor-General representing the Crown, and a formal if limited protection for fundamental rights. Like Bangladesh's original parliamentary constitution, Sri Lanka's 1948 framework was subsequently transformed by political pressures that the original constitutional designers had not fully anticipated.

The transformation was not, as in Bangladesh's case, a product of military intervention. Sri Lanka has never experienced a military coup, a distinction that sets it apart from both Pakistan and Bangladesh. Instead, Sri Lanka's constitutional transformation came through a series of formal constitutional changes driven by the dominant political parties that used their parliamentary majorities to reshape the constitutional order in their own interests. The most fundamental of these changes was the 1978 constitution, which established a powerful executive presidency modeled loosely on the French Fifth Republic, concentrating enormous executive authority in a directly elected President and effectively marginalizing the cabinet and Parliament.

The executive presidency created by J.R. Jayewardene in 1978 was justified by its architects as a necessary remedy for the political instability and governance paralysis of the preceding years, and by the need for decisive executive leadership to manage Sri Lanka's increasingly complex governance challenges. These justifications have echoes in the arguments that were made in Bangladesh for various concentrations of executive power, and they reflect a recurring theme in South Asian constitutional politics: the invocation of governance effectiveness as a justification for institutional arrangements that diminish democratic accountability.

The consequences of Sri Lanka's executive presidency for governance and democratic quality have been broadly negative. The concentration of power in the presidency facilitated the intensification of ethnic chauvinism as a basis for presidential politics, as successive presidents competed for Sinhalese Buddhist votes by making increasingly extreme concessions to ethnic nationalist sentiment. The marginalization of Tamil political voices from meaningful participation in governance contributed to the radicalization of the Tamil political movement and ultimately to the emergence of the Liberation Tigers of Tamil Eelam (LTTE) as a violent secessionist movement. The civil war that lasted from 1983 to 2009 was, in important respects, a product of constitutional failure, of the inability of Sri Lanka's political and constitutional system to accommodate the legitimate aspirations of the Tamil minority within a democratic framework.

The relevance of Sri Lanka's experience for Bangladesh is primarily as a cautionary illustration of how constitutional changes justified in the name of governance effectiveness can produce outcomes far worse than the governance problems they were designed to address. The executive

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presidency's concentration of power did not produce the decisive and effective governance that its advocates promised; it produced instead a system that was highly responsive to ethnic majoritarian political pressures and highly resistant to the accommodation of minority rights, a combination that was constitutionally catastrophic.

34.2 Sri Lanka's 2022 Crisis: Popular Uprising and Constitutional Response

Sri Lanka's 2022 economic and political crisis, which culminated in the unprecedented popular storming of the Presidential palace and the resignation and flight of President Gotabaya Rajapaksa, provides a directly relevant comparative parallel with Bangladesh's August 2024 uprising that overthrew Sheikh Hasina. Both events involved a combination of economic grievance and political frustration in which a population that had endured years of accumulated governance failures finally reached a breaking point and expressed its rejection of the existing political order through mass collective action.

The structural parallels between the two events are striking. In both cases, the government that fell had concentrated power to a degree that had eliminated effective institutional checks on its conduct. In both cases, the triggering event (an economic crisis in Sri Lanka, a quota reform controversy in Bangladesh) was significant but not in itself sufficient to explain the depth of popular anger; the trigger ignited grievances that had accumulated over years of misgovernance. In both cases, the immediate response to the popular uprising was the formation of an interim government that lacked conventional democratic legitimacy but claimed to speak for the popular demands that the uprising expressed.

The differences, however, are also instructive. Sri Lanka's interim arrangement, which brought Ranil Wickremesinghe to the presidency through a parliamentary election after Rajapaksa's resignation, operated entirely within the existing constitutional framework, using the constitutional provisions for presidential succession by parliamentary election to produce a legitimate constitutional transition. Bangladesh's interim arrangement, which brought Professor Yunus to power through an essentially extra-constitutional process justified ex post facto by the Appellate Division using the doctrine of necessity, was more constitutionally ambiguous.

The Sri Lankan transition's constitutional conventionality was, in some respects, a limitation: it brought an experienced but deeply unpopular politician to power precisely because he was the most acceptable figure to the existing parliamentary majority, and it was perceived by many of the uprising's participants as a failure to achieve the fundamental change they had demanded. Bangladesh's more radical transitional arrangement, by installing a Nobel laureate with no prior political role, was more dramatically responsive to the demand for change, but at the cost of greater constitutional ambiguity.

The outcomes of the two transitions reflect these different starting points. Sri Lanka's transition produced economic stabilization and institutional continuity but limited political transformation, with the established political class retaining control of the transition process and the structural conditions that had produced the crisis remaining largely unaddressed. Unlike Bangladesh, where the caretaker model was abolished after accusations of politicization, Nepal's interim structure has been designed to be insulated from partisan capture. Khabarhub Bangladesh's

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transition was more transformatively ambitious, producing an extensive reform agenda and significant institutional changes, but at the cost of constitutional ambiguity and the exclusion of the major established political force (the Awami League) from the transition process.

34.3 The Ethnic Accommodation Problem: Comparative Constitutional Perspectives

Sri Lanka's experience with the constitutional management of ethnic diversity is relevant for Bangladesh both through direct parallel and through contrast. Bangladesh is an ethnically relatively homogeneous state (approximately ninety-eight percent Bengali Muslim), but it contains significant religious, linguistic, and indigenous minority communities whose treatment by the dominant majority raises important questions about minority rights and constitutional inclusion.

The Buddhist and Hindu minorities, who together constitute approximately ten percent of Bangladesh's population, have been subject to periodic violence and systematic economic discrimination throughout Bangladesh's post-independence history. The Christian minority, though small in number, has faced periodic harassment. The indigenous peoples of the Chittagong Hill Tracts, who maintained a distinct cultural identity and resisted incorporation into the Bangladeshi state through a protracted insurgency from the 1970s to the 1990s, represent the most complex minority rights challenge in Bangladesh's constitutional history.

The Chittagong Hill Tracts Peace Accord of 1997, signed under the Hasina government's first term, attempted to address the indigenous peoples' political and cultural rights through a framework of regional autonomy and cultural recognition. The accord's implementation has been deeply unsatisfactory, with the state failing to fulfill many of its commitments on land restitution, the withdrawal of military forces, and the effective operation of autonomous regional institutions. The legal and constitutional framework for indigenous rights in Bangladesh remains underdeveloped, and the constitutional reform agenda of 2024 to 2026 has addressed indigenous rights issues only tangentially.

The comparative constitutional literature on minority rights and constitutional inclusion offers several frameworks for addressing these challenges. The consociational model, associated with Arend Lijphart's work on plural societies, proposes institutional arrangements that give minority groups formal representation in governmental institutions, veto rights over decisions that affect their core interests, and guaranteed levels of public resource allocation. The liberal pluralism model emphasizes individual rights rather than group rights, arguing that the best protection for minorities comes from strong universal rights guarantees rather than from group-specific institutional arrangements. The indigenous rights framework, developed in international law through instruments like the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples, recognizes a specific category of rights for indigenous peoples that goes beyond ordinary minority rights to include rights of self-determination, land and resource rights, and cultural autonomy.

Bangladesh's constitutional framework for minority rights has not drawn systematically on any of these comparative frameworks. The July National Charter of 2025 included some attention to minority rights, but the specific proposals remained vague and were not among the most

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contested elements of the reform agenda. The February 2026 elections saw very limited representation of minority communities among the candidates of major parties, continuing a long pattern of exclusion that belies the formal constitutional commitment to equality.

CHAPTER THIRTY-FIVE: NEPAL'S CONSTITUTIONAL TRANSITION: PEACE PROCESS, FEDERALISM, AND THE CHALLENGES OF DEMOCRATIC CONSOLIDATION

35.1 Nepal's Post-Conflict Constitutional Making: A Decade of Transformation

Nepal's constitutional transition, from the People's Movement of 2006 that ended the decade-long Maoist insurgency and the absolute monarchy, through the Constituent Assembly processes of 2008 to 2015, to the adoption of the 2015 constitution and the subsequent political challenges, offers a fascinating comparative case study in post-conflict constitutional making. Nepal's experience is particularly relevant for Bangladesh because both countries have undertaken significant constitutional reform in recent years in response to accumulated governance failures, and both have faced the challenge of translating the aspirations of popular movements into durable constitutional arrangements.

The Comprehensive Peace Agreement of November 2006, which ended Nepal's decade-long civil conflict, committed the major political parties and the Maoist movement to a constitutional transition that would address the structural inequalities that had fueled the conflict. The agreement established a framework for a Constituent Assembly that would draft a new constitution through a genuinely participatory process, replacing the interim constitution that had been adopted as a bridging arrangement. The Constituent Assembly was to be elected by universal suffrage and would represent Nepal's extraordinary ethnic, caste, regional, and gender diversity through a mixed first-past-the-post and proportional representation electoral system.

The Constituent Assembly process was extraordinarily extended. The first Constituent Assembly, elected in April 2008, was unable to complete a constitution within its initial two-year mandate and was repeatedly extended before being dissolved in May 2012 without having adopted a constitution. The second Constituent Assembly, elected in November 2013, succeeded in adopting the new constitution in September 2015, after a process of intense political negotiation, public consultation, and considerable controversy.

The 2015 constitution established a federal democratic republic with three levels of government (federal, provincial, and local), a bicameral federal parliament, a directly elected President with ceremonial powers, and a cabinet accountable to the lower house of Parliament. The constitutional design included extensive provisions for the representation of historically marginalized groups, including women, indigenous peoples, the Dalit community, and Muslims, through a combination of reserved seats and proportional representation requirements.

The relevance of Nepal's constitutional experience for Bangladesh lies partly in the substantive parallels and partly in the procedural lessons. Nepal's decade-long constitutional transition, for

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all its frustrations and delays, produced a constitution that has greater democratic legitimacy than most alternatives because it was produced through a genuine constituent assembly process with broad popular participation. Bangladesh's July National Charter of 2025, by contrast, was produced through a process that was considerably less participatory and inclusive, reflecting the time pressure of the transition and the political dynamics of the post-uprising period.

The Nepalese constitutional experience also illustrates the challenges of federalism as a mechanism for managing territorial diversity, challenges that Bangladesh has not faced in the same form but that are relevant to thinking about decentralization and local governance more generally. Nepal's federal structure has produced significant governance challenges, including questions about the division of powers between levels of government, the adequacy of fiscal transfers to subnational governments, and the capacity of newly created provincial and local governments to exercise their constitutional functions effectively.

35.2 Nepal's 2025 Interim Government: A Direct Contemporary Parallel

Nepal can draw both warnings and inspiration from the experiences of Bangladesh and Sri Lanka. Khabarhub Nepal's most recent political crisis, which produced a Gen Z-led movement that led to the resignation of Prime Minister K.P. Sharma Oli in mid-2025 and the formation of an interim government headed by former Chief Justice Sushila Karki, provides a directly contemporary parallel with both Bangladesh's 2007 to 2008 caretaker period and its 2024 to 2026 post-uprising transition.

Nepal's interim government, headed by former Chief Justice of Nepal Sushila Karki, was formed on 12 September 2025, and will continue to govern until a democratic government is elected in the forthcoming elections. LSE The choice of a former Chief Justice as the head of an interim government is, of course, a direct parallel with Bangladesh's Thirteenth Amendment system, which placed a retired Chief Justice at the head of the caretaker government. Nepal's arrangement was, however, more ad hoc and less constitutionally formalized, reflecting Nepal's different constitutional tradition and the specific circumstances of its 2025 crisis.

Unlike Bangladesh, where the caretaker model was abolished after accusations of politicization, Nepal must ensure its interim structure is insulated from partisan capture and designed solely to deliver on its defined objectives. Khabarhub This recommendation, directed at Nepal's current situation, articulates precisely the lesson that Bangladesh's own experience should have taught: that the institutional design of caretaker arrangements matters enormously, and that formal mechanisms for ensuring neutrality are only as effective as the political conditions that sustain them.

The analytical comparison between Nepal's 2025 interim government and Bangladesh's 2007 to 2008 caretaker government illuminates several important dimensions of transitional governance. Both arrangements were justified by the extraordinary circumstances of their formation, by the failure of existing political arrangements to produce acceptable governance, and by the need for a neutral authority to oversee a transition to renewed democratic governance. Both faced the challenge of how far to take their reform mandate beyond the immediate transitional task. And both operated in contexts where the major established political forces were simultaneously

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dependent on the transitional arrangement for the restoration of democratic normalcy and critical of specific aspects of the transitional government's conduct.

The differences are equally instructive. Bangladesh's 2007 transition was underpinned by a formal constitutional framework (the Thirteenth Amendment) that provided at least formal legal authority, while Nepal's 2025 arrangement rested on a more improvised constitutional foundation. Bangladesh's emergency declaration gave the caretaker government powers that went well beyond what the caretaker constitutional provisions contemplated, while Nepal's interim arrangement operated within a tighter set of constitutional constraints. And Bangladesh's transition was accompanied by a military establishment that played a significant informal role in shaping the government's conduct, while Nepal's military has maintained a more consistently subordinate relationship to civilian political authority.

35.3 Constitution-Making in Post-Conflict and Post-Crisis Societies: Lessons and Pitfalls

The broader comparative literature on constitution-making in post-conflict and post-crisis societies identifies several recurring themes and lessons that are directly relevant to Bangladesh's ongoing constitutional reform process.

The first major theme is the tension between speed and legitimacy in constitutional design. Post-crisis transitions face intense time pressure: the political window of opportunity for constitutional reform is often narrow, closing as soon as the political actors who benefited from the old system regroup and begin to reassert their influence. But rushed constitutional processes that lack adequate deliberation and broad participation tend to produce constitutions that lack deep popular ownership and that fail to achieve the durable political consensus necessary for constitutional stability.

Nepal's experience illustrates this tension vividly. The decade-long constitutional making process was often frustrating and appeared wasteful, but the extended deliberation produced a constitution with a degree of political ownership among Nepal's diverse communities that a quicker process might not have achieved. Bangladesh's July National Charter, by contrast, was produced under considerable time pressure and reflected primarily the perspectives of the major political parties and reform commissions, with more limited engagement from minority communities, women's organizations, and civil society groups outside Dhaka.

The second major theme is the importance of inclusive processes that give voice to historically marginalized groups. Constitutional transitions are moments of unusual political openness that can be used to address historical exclusions that normal politics does not provide opportunities to correct. But this potential is only realized if the constitutional design process is genuinely inclusive, providing real opportunities for marginalized groups to shape the constitutional text rather than merely to observe a process controlled by dominant elites.

Bangladesh's constitutional reform process of 2024 to 2026 had mixed performance on this dimension. The reform commissions included some attention to minority rights, indigenous peoples, and women's representation, and the July National Charter contained several provisions relevant to these groups. But the process by which the Charter was negotiated, primarily through

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the National Consensus Commission drawing on six of the eleven reform commissions, excluded important voices, including the women's commission, which was excluded from the NCC's composition and terms of reference. ConstitutionNet The referendum's bundled format, which did not allow voters to selectively approve or reject specific provisions, also limited the ability of marginalized communities to endorse provisions that addressed their specific interests while rejecting others that did not.

The third major theme is the need for constitutional provisions to be realistic and implementable, not merely aspirational. Constitutions that promise more than the political and institutional system can deliver generate cynicism and undermine constitutional legitimacy when their promises go unfulfilled. Nepal's 2015 constitution, despite its democratic ambitions, has faced significant challenges in implementation, with the federal structure creating coordination problems, the proportional representation requirements for marginalized groups producing tokenistic representation without genuine political influence, and the judicial system remaining chronically underfunded and overburdened.

CHAPTER THIRTY-SIX: THE LATIN AMERICAN EXPERIENCE: DEMOCRATIC CONSOLIDATION, ANTI-CORRUPTION CAMPAIGNS, AND JUDICIAL INDEPENDENCE

36.1 Brazil, Peru, and the Car Wash Phenomenon: Anti-Corruption and Democratic Governance

Latin America's experience with anti-corruption campaigns provides the richest comparative material outside South Asia for evaluating the Fakhruddin period's anti-corruption agenda. The region has been the site of several major anti-corruption campaigns in recent decades that combined significant prosecutorial achievements with deep controversies about the proper limits of anti-corruption enforcement in democratic systems, generating a substantial academic and policy literature that bears directly on the Bangladesh case.

Brazil's "Operação Lava Jato" (Operation Car Wash), launched in 2014 and formally discontinued in 2021, is the most extensively analyzed of these campaigns. The operation uncovered a vast scheme of corruption centered on the state oil company Petrobras, in which construction companies and political parties had collaborated in an elaborate kickback system that siphoned billions of dollars from public contracts. The investigation, led by federal judge Sergio Moro and a team of federal prosecutors in Curitiba, resulted in the conviction of numerous senior politicians and business executives, including former Presidents Luiz Inácio Lula da Silva and Michel Temer.

The Car Wash operation achieved remarkable prosecutorial results by the standards of anti-corruption enforcement in any country: high-profile convictions of sitting and former heads of state, significant prison sentences for powerful politicians and executives who had previously seemed immune from legal accountability, and recovery of substantial amounts of illicitly

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obtained funds. These results made the operation internationally celebrated as a model of effective anti-corruption enforcement.

The operation also generated profound controversies that ultimately led to its discontinuation and to the reversal of several of its most prominent convictions. The Brazilian Supreme Court's 2021 annulment of Lula's convictions, on the grounds that the Curitiba court had lacked jurisdiction and that the lead judge had exhibited bias by subsequently accepting a cabinet position in the government of the candidate who defeated Lula in the 2018 elections, illustrated the vulnerability of high-profile anti-corruption prosecutions to procedural and ethical challenges when they are conducted under non-standard procedures and by officials with apparent conflicts of interest.

The Car Wash experience is directly relevant to Bangladesh's anti-corruption campaign for several reasons. First, it demonstrates that anti-corruption campaigns that achieve impressive short-term prosecutorial results can nonetheless fail to produce the structural changes in political economy that make corruption less prevalent over the long term. The corruption networks that Car Wash exposed had been built over decades; their disruption through prosecutions did not, in itself, change the political incentive structures that had generated them, and there are strong indications that similar networks have re-formed in the aftermath of the campaign.

Second, the Car Wash experience illustrates the importance of procedural legitimacy in anti-corruption enforcement. The annulment of Lula's convictions on jurisdictional and bias grounds demonstrated that even genuinely effective anti-corruption campaigns can be undermined when their procedures deviate from the standards that fair criminal justice requires. The Bangladesh special courts' procedural compromises during the Fakhruddin period created similar vulnerabilities, and the pattern of conviction reversals after the 2008 elections suggests that these vulnerabilities were indeed exploited.

Third, the Car Wash experience raises deep questions about the appropriate role of judges in anti-corruption enforcement. The combination of judicial investigation and prosecution that characterized the Curitiba court's operation, modeled loosely on the French examining magistrate tradition, gave the lead judge enormous discretionary power and created the conditions for the conflicts of interest that ultimately discredited the operation. Bangladesh's special courts similarly concentrated significant power in a limited number of judicial officials, creating similar vulnerability to both actual and perceived bias.

36.2 Peru and the Repeated Presidential Crisis: Constitutional Impotence and Democratic Erosion

Peru's political history since the restoration of democracy in 2001 provides a vivid illustration of how formal democratic institutions can coexist with chronic political instability and governance dysfunction, generating repeated constitutional crises that are managed through institutional improvisation rather than through principled constitutional design.

Peru has had a rapid succession of presidents since Alejandro Toledo's election in 2001, with several forced from office by corruption charges or impeachment. Alberto Fujimori, who had returned to Peru from exile in Chile in 2005, was convicted of human rights crimes and

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corruption in 2009 and sentenced to twenty-five years in prison. Alan García, who served as President from 2006 to 2011, was accused of massive corruption related to infrastructure contracts and died by suicide in 2019 as police arrived to arrest him. Ollanta Humala, who governed from 2011 to 2016, was detained on corruption charges. Pedro Pablo Kuczynski was impeached in 2018 amid corruption scandals. Martín Vizcarra was impeached twice in 2020 before being removed from office. Manuel Merino, who succeeded Vizcarra for just days, resigned after mass protests. Francisco Sagasti served as an interim President before Castillo's election. Pedro Castillo, elected in 2021, was arrested after a failed self-coup attempt in December 2022. And Dina Boluarte, who succeeded him, has governed amid constant political turbulence.

This staggering rate of presidential turnover and removal through impeachment and criminal prosecution reflects a constitutional system in which the formal mechanisms of accountability (impeachment, criminal prosecution) are available but are deployed through processes that lack normative consensus about their appropriate scope and purpose. Peru's constitution permits impeachment for "moral incapacity," a standard so vague that it can be used for essentially political purposes by a legislature hostile to the executive. The combination of this broad impeachment standard with aggressive criminal prosecution of political figures has created a system in which no president can expect to complete their term and in which criminal prosecution functions as a de facto supplement to the normal mechanisms of political accountability.

The Peruvian experience raises fundamental questions about the relationship between anti-corruption enforcement and democratic governance that are directly relevant to Bangladesh. When is criminal prosecution of politicians a necessary mechanism of democratic accountability, and when does it become a substitute for, or a distortion of, the accountability that democratic elections are supposed to provide? There is no simple answer to this question, but the Peruvian experience suggests that when criminal prosecution of political figures becomes routine and politically motivated, it can undermine rather than strengthen democratic governance by creating a climate of mutual delegitimization in which every political actor faces criminal jeopardy and in which the threat of prosecution becomes a tool of political competition rather than a mechanism of genuine accountability.

36.3 Argentina's Democratic Transition and the Lessons of Accountability

Argentina's experience with the transition from military rule and the subsequent management of accountability for the crimes of the military government provides one of the foundational case studies for the transitional justice literature, and its lessons are relevant to Bangladesh's situation not because the specifics are parallel (Argentina dealt with human rights crimes on a scale that Bangladesh did not) but because it illustrates fundamental principles about the role of legal accountability in democratic transitions.

Argentina's initial approach to accountability after the 1983 democratic transition was cautious: the Alfonsín government prosecuted only the senior members of the three military juntas, not the hundreds of lower-ranking officers who had personally committed the abuses. The resulting truth commission report, "Nunca Más" (Never Again), documented the systematic nature of the

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human rights crimes but deliberately avoided naming thousands of perpetrators in order to manage the political risks of comprehensive accountability.

This cautious approach was progressively superseded as Argentina's democratic consolidation deepened and as the political climate shifted. The "Full Stop" and "Due Obedience" laws that Alfonsín's government had enacted to protect mid-level officers were eventually declared unconstitutional by the Supreme Court in 2003 and repealed by the legislature, opening the way for the prosecution of hundreds of additional perpetrators. The prosecutions that followed, which continued through the 2000s, 2010s, and 2020s, represented a remarkable example of how democratic consolidation can create the political conditions for progressively deeper accountability that would have been impossible immediately after the transition.

The theoretical lesson from Argentina's experience is that the timing and sequencing of accountability measures matters enormously. Comprehensive accountability that would have destabilized the early democratic transition became possible and beneficial as democratic consolidation progressed. The Bangladesh case suggests a similar dynamic: the most that the transitional Fakhruddin government could realistically achieve in anti-corruption enforcement was the creation of institutional structures (the reconstituted ACC) and the initiation of prosecutorial processes that could be continued and deepened by subsequent democratic governments. The failure to sustain this continuity, as the post-2008 governments prioritized political accommodation over anti-corruption enforcement, represents a missed opportunity that the Argentina comparison helps to illuminate.

CHAPTER THIRTY-SEVEN: THE ROLE OF INTERNATIONAL INSTITUTIONS: IMF, WORLD BANK, AND THE GOVERNANCE OF TRANSITIONS

37.1 The Evolution of International Institutional Engagement with Governance

The relationship between international financial institutions and the domestic governance of their member states has evolved dramatically over the past three decades, moving from a formally apolitical stance that claimed to deal only with technical economic matters to a comprehensive engagement with governance, rule of law, and institutional quality that represents a profound expansion of the international regulatory domain.

The International Monetary Fund was originally designed as a technical financial institution whose mandate was limited to maintaining international monetary stability through balance of payments support for member countries facing external financial difficulties. The World Bank was designed to provide long-term development financing for member countries' infrastructure and development projects. Neither institution was originally intended to engage with the political governance of its members; indeed, both the IMF's and World Bank's articles of agreement explicitly prohibited them from taking account of the political character of their members in making lending decisions.

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This formal apolitical stance began to erode in the 1980s with the emergence of the structural adjustment agenda, which required borrowing countries to undertake extensive policy reforms as conditions for financial support. While the initial structural adjustment conditions were primarily economic (fiscal adjustment, trade liberalization, privatization), it quickly became apparent that the implementation of these reforms depended on the quality of governance and institutions in ways that could not be addressed purely through economic policy conditions. Countries with corrupt bureaucracies, ineffective judiciaries, and weak property rights protection could not implement economic reforms effectively, regardless of the formal policy changes they undertook.

The World Bank's 1997 World Development Report, "The State in a Changing World," marked a significant intellectual turning point, acknowledging the central importance of state capacity and institutional quality for development outcomes and committing the institution to engagement with governance issues as a central dimension of its development assistance work. The development of the Bank's governance diagnostic tools, including the Public Expenditure Review, the Country Policy and Institutional Assessment, and eventually the Worldwide Governance Indicators, represented the operationalization of this intellectual commitment into systematic measurement and analysis.

The IMF's engagement with governance evolved along a parallel but initially more cautious track, constrained by its members' sensitivity about the political dimensions of governance engagement. The Fund's 2018 paper on governance and corruption represented a significant development, acknowledging for the first time that governance and corruption issues could be so severe as to undermine macroeconomic stability in ways that fell squarely within the Fund's mandate. The paper established a framework for the Fund's engagement with governance issues that balanced the need for engagement with the constraints of the Fund's formal mandate and the political sensitivities of its members.

37.2 International Conditionality and Domestic Sovereignty: The Theoretical Debate

The expansion of international institutional engagement with domestic governance has generated an extensive theoretical debate about the appropriate limits of external influence on domestic political arrangements and the relationship between international conditionality and national sovereignty.

The sovereignty critique of international conditionality argues that by attaching conditions related to domestic governance to financial support, international institutions effectively exercise power over the domestic political arrangements of borrowing countries without the democratic authorization that domestic constituencies have. The World Bank and IMF are not democratically accountable to the populations of the countries whose policies they influence; their governance is controlled by their member governments in proportion to their financial contributions, meaning that wealthy countries have disproportionate influence over the institutions' policies and the conditions they impose on borrowers.

This critique has been developed in different ways by scholars associated with different political perspectives. Post-colonial scholars like Chidi Anselm Odinkalu have emphasized the continuity

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between conditionality and colonial control, arguing that the prescriptions of Washington-based institutions often reflect the values and interests of wealthy northern donors rather than the genuine needs and preferences of southern populations. Leftist political economists like Joseph Stiglitz and Dani Rodrik have argued that the specific economic policy prescriptions associated with the Washington Consensus were often counterproductive, imposing ideologically-driven market fundamentalism in contexts where more interventionist approaches would have been more effective. And populist politicians across the political spectrum in borrowing countries have found conditionality a useful scapegoat for the domestic political costs of necessary economic adjustments.

The sovereignty critique has been partially answered by arguments that emphasize the voluntary character of conditionality agreements, the genuine need for external anchors in countries with weak domestic governance institutions, and the evidence that well-designed conditionality can support rather than undermine domestic reform coalitions. The most sophisticated defenses of conditionality acknowledge its limitations while arguing that in contexts of serious governance failure, the alternative to external engagement is not autonomous domestic reform but continued governance deterioration.

Fakhruddin Ahmed's extensive World Bank background gave him a nuanced perspective on these debates that informed his management of Bangladesh's international relationships during the caretaker period. He was not naive about the limitations of international conditionality or about the extent to which international institutional prescriptions reflected the particular intellectual fashions and organizational interests of the institutions rather than objective technical analysis. But he was equally aware, from his professional experience, that in contexts of severe governance failure, international engagement could provide important resources: financial support, technical expertise, external credibility, and the political cover that allowed domestic reformers to pursue unpopular measures by attributing them to external requirements.

37.3 The IMF and Bangladesh: From Balance of Payments Support to Governance Engagement

The IMF's relationship with Bangladesh during the Fakhruddin period and its aftermath provides a specific case study of how the Fund's expanded governance mandate interacted with Bangladesh's domestic political and economic situation. The caretaker government's engagement with the IMF, which produced a Poverty Reduction and Growth Facility arrangement in 2007, was significant both for its economic management implications and for its governance dimensions.

The IMF arrangement of 2007 provided Bangladesh with external financial support during the economic disruptions of the emergency period, and more importantly provided a framework of macroeconomic commitments that the government used to justify fiscal discipline and exchange rate management decisions that might otherwise have been politically difficult. The arrangement required Bangladesh to maintain specific targets for fiscal deficit, inflation, and foreign exchange reserves, creating measurable benchmarks against which the government's economic management could be assessed.

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The governance dimensions of the IMF's engagement with Bangladesh during the Fakhruddin period were more implicit than explicit. The Fund's formal conditionality did not extend to the anti-corruption campaign, the judicial separation reform, or the electoral law changes; these were domestic institutional initiatives that fell outside the Fund's formal mandate as it was interpreted at the time. But the Fund's implicit endorsement of the caretaker government as a responsible economic manager, expressed through the continuation of the financial arrangement and the Fund's favorable public assessments of Bangladesh's economic management, provided important international legitimacy that was valuable for the government's broader governance agenda.

The most recent IMF assessments of Bangladesh's economic situation, including the November 2025 Article IV consultation statement, provide a contemporary perspective on how the governance issues that the Fakhruddin period addressed have evolved in the seventeen years since the caretaker government left office. The Fund's engagement with governance issues has deepened significantly since 2007 ConstitutionNet, and its assessments now regularly address institutional quality, anti-corruption effectiveness, and governance transparency in ways that go beyond the narrow macroeconomic focus of its earlier Bangladesh work.

37.4 The World Bank's Governance Diagnostics and Bangladesh

The World Bank's governance assessment framework, including its Worldwide Governance Indicators and country-specific governance diagnostics, provides a longitudinal perspective on Bangladesh's governance performance that spans the Fakhruddin period and its aftermath. This data allows a more systematic assessment of the caretaker period's governance legacy than retrospective political analysis alone can provide.

The World Bank's six governance dimensions, as measured by the Worldwide Governance Indicators, cover voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, and control of corruption. Bangladesh's performance on these dimensions over the past two decades shows a complex pattern that partially but not entirely validates the narrative of reform and subsequent backsliding that the political analysis suggests.

The voice and accountability dimension, which measures political participation, freedom of expression, and the accountability of government, shows a trajectory of improvement under the caretaker period's preparation of the electoral system, followed by sharp decline under the post-2009 Awami League governments as the electoral playing field was progressively restricted, and a recovery after the August 2024 uprising and the February 2026 elections. The control of corruption dimension shows a more modest improvement during the caretaker period that proved difficult to sustain, with corruption indicators remaining poor throughout the period from 2008 to 2024.

The government effectiveness and rule of law dimensions show the most interesting patterns. Both dimensions showed some improvement during the Fakhruddin period, reflecting the institutional reforms in the judiciary and electoral administration, and these improvements were more durable than the anti-corruption results, persisting in part through the post-2008 period even as political accountability deteriorated. This pattern is consistent with the argument that the

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Fakhruddin period's most durable contributions were in the areas of institutional capacity and judicial reform, rather than in the anti-corruption enforcement that generated the most political controversy.

CHAPTER THIRTY-EIGHT: INTERNATIONAL ELECTION OBSERVATION AND THE STANDARDS FOR DEMOCRATIC TRANSITIONS

38.1 The Architecture of International Election Observation

International election observation has become a significant dimension of global governance since the end of the Cold War, developing from a relatively informal practice into a sophisticated professional activity governed by agreed standards, organized through established institutions, and conducted according to methodologies that claim scientific validity. Understanding this architecture, and the theoretical questions it raises, is essential for evaluating the role of international observation in Bangladesh's electoral history, including the December 2008 elections that concluded the Fakhruddin period and the February 2026 elections that completed the post-Hasina transition.

The modern practice of international election observation traces its origins to the wave of democratic transitions in the late 1980s and early 1990s. The Carter Center, founded by former U.S. President Jimmy Carter in 1982, was among the earliest organizations to develop a systematic methodology for international election observation, applying it first to the Panamanian elections of 1989 and subsequently to elections in dozens of countries across Latin America, Africa, Asia, and the former communist world. The European Union's election observation program, launched in the 1990s, developed a distinctive methodology that combined political observation with a systematic assessment of the legal framework governing elections. The Commonwealth's election observation activities provided additional coverage, particularly in Commonwealth member states.

The professionalization of election observation culminated in the 2005 Declaration of Principles for International Election Observation and the associated Code of Conduct for International Election Observers, jointly endorsed by the United Nations, regional organizations, and major civil society organizations involved in election observation. The Declaration established binding norms for how observer missions should operate: impartially, comprehensively, accurately, and without interference in the electoral process itself. It also established that observer missions should assess elections against international standards for democratic elections, not against any particular country's historical baseline.

This insistence on international standards rather than historical baselines is theoretically significant. It means that elections in countries with weak democratic traditions are not assessed leniently merely because they represent an improvement over previous elections; they are assessed against the same universal standards that apply to elections in established democracies. This approach has been criticized as unrealistic and as potentially counterproductive, by raising the bar so high that improvements that represent genuine progress are dismissed as inadequate.

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But it has been defended as necessary to maintain the integrity of the observation enterprise, preventing the "grade inflation" that would result from assessing elections by different standards in different contexts.

38.2 The December 2008 Elections: Assessment and Its Significance

The December 2008 elections in Bangladesh were assessed by all major international observer missions as the most credible elections Bangladesh had held in many years, and their positive assessment was an important dimension of the Fakhruddin government's political legacy. Understanding what the international observers found credible and what concerns they raised provides a nuanced picture of the elections' actual quality.

The Carter Center's final report on the December 2008 elections was broadly positive, noting the generally peaceful campaign environment, the successful implementation of the new biometric voter registration system, the independence and professionalism of the Election Commission, and the transparency of the vote counting and tabulation process. The mission characterized the elections as "highly competitive, largely peaceful, and well-administered," representing "a step forward for democratic development in Bangladesh."

The EU observation mission reached similar overall conclusions while raising more specific concerns about certain aspects of the pre-election environment. The mission's final report acknowledged the improvement in electoral administration compared to previous Bangladeshi elections but noted concerns about the restrictions on political activity that had been in effect for much of the pre-election period under the emergency, about the lack of transparency in the money sources of political campaigns, and about the media environment, in which state media continued to favor the incumbent transitional government.

The Carter Center and EU missions' assessments illustrate the inherent complexity of election observation in transitional contexts. The elections were credible in the specific sense that the vote-counting process was transparent and the results reflected genuine popular preferences. But they were held in a political environment that had been significantly shaped by the preceding emergency period, including the detention of political leaders, the restrictions on political activity, and the anti-corruption prosecutions that had altered the composition of the political competition. Whether these background conditions compromised the fairness of the elections in ways that the vote-counting transparency did not capture is a question that the international observer methodology, which focuses primarily on the immediate electoral administration process, is not well-suited to answer.

This limitation of international election observation methodology, which has been extensively discussed in the academic literature on election observation, is directly relevant to Bangladesh's 2026 elections as well. The February 2026 elections were conducted in a political environment shaped by the Awami League's ban and the exclusion of its candidates from participation, by the emergency detention of many AL members during the post-uprising period, and by the political atmosphere that these exclusions created. International observer assessments of the 2026 elections must grapple with the same question that arose in 2008: can elections be credible in a

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narrow administrative sense while taking place in a political environment that is compromised in ways that the administrative assessment methodology does not capture?

38.3 The EU's Electoral Framework and Bangladesh: A Long-Term Partnership

The European Union's engagement with Bangladesh's electoral development has been more sustained and comprehensive than a focus on specific observation missions would suggest. The EU has been a significant donor for electoral assistance in Bangladesh over many years, providing technical and financial support for Election Commission capacity building, voter education, civil society electoral monitoring, and other dimensions of the electoral governance system.

This sustained engagement has given the EU a perspective on Bangladesh's electoral development that spans multiple electoral cycles, allowing assessment of trends and trajectories rather than merely snapshots at specific election moments. The EU's concerns about Bangladesh's electoral system have evolved over time in response to the specific governance failures of different periods, reflecting the institution's accumulated understanding of the specific vulnerabilities in Bangladesh's electoral framework.

The EU's external action framework for democracy support, which was significantly revised in 2012 and again in 2020, provides the conceptual framework for this engagement. The framework emphasizes that democratic governance requires not merely formal electoral procedures but the broader political conditions for meaningful democratic participation: freedom of expression and assembly, an independent judiciary, an accountable executive, and a civil society that can hold power to account. This comprehensive view of democracy support goes well beyond the narrow focus on election-day administration that characterized earlier EU election observation activities.

The EU's 2020 Democracy Action Plan, adopted under the shadow of democratic backsliding in several EU member states and partner countries, emphasized the need for international democracy support to address the new forms of democratic erosion that have emerged in the twenty-first century: the use of legal instruments to suppress civil society, the capture of independent institutions through formal processes, and the manipulation of digital communication environments to distort political discourse. These new threats to democratic governance are directly relevant to Bangladesh's experience under the post-2008 Awami League governments, and they require international democracy support frameworks that go beyond the traditional focus on electoral administration.

CHAPTER THIRTY-NINE: THE DOCTRINE OF BASIC STRUCTURE IN COMPARATIVE PERSPECTIVE: INDIA, BANGLADESH, AND BEYOND

39.1 The Basic Structure Doctrine: Origins and Development

The doctrine of basic structure, which has become central to the constitutional jurisprudence of both India and Bangladesh and which featured prominently in the March 2026 Appellate

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Division judgment, is one of the most theoretically significant developments in twentieth-century constitutional law. Its comparative analysis across multiple constitutional systems reveals both the doctrine's intellectual coherence and the specific ways in which different constitutional traditions have adapted it to their particular circumstances.

The intellectual foundations of the basic structure doctrine can be traced to several sources. In German constitutional theory, the concept of an "eternity clause" protecting certain constitutional provisions from amendment was explicitly incorporated into the Basic Law's Article 79(3), reflecting the experience of how the Weimar Republic's constitutional order had been dismantled through formally valid constitutional amendments by the Nazi government. The German Constitutional Court's development of the doctrine in the concrete case law drew on the philosophical tradition of natural law and on the specific historical experience that Article 79(3) was designed to prevent.

In the Indian constitutional tradition, the basic structure doctrine emerged from a specifically Indian constitutional controversy about the proper scope of Parliament's constitutional amendment power. The Constitution of India grants Parliament the power to amend "any provision" of the Constitution by a two-thirds majority in both houses, without listing specific provisions as unamendable. The question of whether this amendment power was truly unlimited, or whether certain features of the Constitution were so fundamental that they could not be eliminated by even a supermajority, was contested from the early years of independent India.

The critical legal background was the tension between the Supreme Court's assertion of the right to invalidate laws that violated fundamental rights and the Parliament's efforts, under Prime Minister Indira Gandhi, to limit the Court's ability to strike down legislation enacted to advance social and economic reform. The Parliament repeatedly amended the Constitution to nullify Supreme Court decisions that had struck down land reform legislation, creating a cycle of constitutional conflict that culminated in the Kesavananda Bharati case.

The Kesavananda Bharati v. State of Kerala judgment, decided by a thirteen-judge bench of the Indian Supreme Court in April 1973, established the basic structure doctrine by a seven-to-six majority that was itself deeply divided about the specific content of the doctrine and the identity of the constitutional features it protected. The majority held that while Parliament could amend any provision of the Constitution, it could not use its amendment power to destroy the "basic structure" or "essential features" of the Constitution. The judgment identified several such features, including the supremacy of the Constitution, the republican and democratic form of government, the secular character of the Constitution, the separation of powers, the federal character of the Constitution, and the dignity of the individual with his freedom and rights.

The practical significance of the doctrine was immediately demonstrated in the aftermath of the Emergency. When Mrs. Gandhi's government enacted the Thirty-Ninth and Forty-Second Amendments to insulate her election from judicial challenge and to eliminate judicial review of constitutional amendments, the Supreme Court invoked the basic structure doctrine to strike down these provisions, holding that they violated the basic structure by eliminating judicial review and undermining the democratic character of the Constitution.

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39.2 The Bangladesh Basic Structure Doctrine: From Anwar Hossain to the March 2026 Judgment

Bangladesh's basic structure doctrine developed from the Indian model but has its own distinctive history and content, shaped by the specific constitutional controversies of Bangladesh's post-independence experience.

The Anwar Hossain Chowdhury v. Bangladesh (1989) case, which has been mentioned in earlier parts of this textbook, established the basic structure doctrine in Bangladesh by striking down the Eighth Amendment's creation of a permanent bench of the Supreme Court in Chittagong. The court held that this amendment violated the basic structure by undermining the unity and independence of the Supreme Court, which was a fundamental feature of Bangladesh's constitutional design. The judgment's reasoning, while not as extensively developed as the Indian Kesavananda judgment, established the principle that constitutional amendments could be invalid if they destroyed the Constitution's fundamental character.

The subsequent development of the doctrine in Bangladesh has been uneven, reflecting the political pressures on the judiciary and the inconsistency of constitutional reasoning across different benches. The High Court and Appellate Division have invoked the basic structure doctrine in various cases but without developing a clear and comprehensive account of which features of the Constitution are protected by it.

The March 2026 full judgment of the Appellate Division in the 13th Amendment review case represents the most developed and ambitious statement of the basic structure doctrine in Bangladesh's constitutional history. The judgment's identification of free and fair elections and the institutional mechanisms necessary to ensure them as elements of the basic structure represents a significant extension of the doctrine into the electoral governance domain. The judgment ties democracy to free and fair elections, and then ties those elections to institutional safeguards that can neutralise the advantage of incumbency. The Daily Star This reasoning, which goes beyond the formal democratic procedures to address the substantive conditions for their effectiveness, reflects the influence of both the Indian jurisprudence on democracy as a basic structure element and the broader comparative constitutional literature on democratic erosion.

The court now says plainly that a fiction became the vehicle for democratic decay, and once the Supreme Court itself says the caretaker mechanism strengthened 'the foundation of a substantive democratic architecture', and once it treats electoral credibility as integral to democracy, the constitutional defence of the 15th Amendment's repeal of caretaker government looks badly weakened. The Daily Star This judicial language is unusually direct in its attribution of democratic failure to specific constitutional decisions, and it reflects a court that sees itself as playing an active role in Bangladesh's constitutional reconstruction.

The comparative perspective enriches the analysis of the March 2026 judgment significantly. The Indian Supreme Court's development of the basic structure doctrine was similarly responsive to specific political threats to democratic governance, and the doctrine has functioned in India as a judicial check on constitutional changes that undermine democratic competition. The German

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Constitutional Court's eternity clause jurisprudence has similarly protected democratic procedures from formal constitutional elimination. What distinguishes the Bangladesh context is the specific nature of the threat: not the formal elimination of elections but the systematic manipulation of the electoral administration machinery in ways that rendered elections non-competitive in practice while maintaining their formal constitutional existence.

39.3 Basic Structure Doctrines in Africa and Latin America: Expanding the Comparative Frame

The basic structure doctrine and related constitutional entrenchment concepts have been developing in constitutional systems beyond South Asia and Germany, reflecting a global trend toward judicial engagement with the protection of constitutional fundamentals. Examining how these developments have unfolded in Africa and Latin America provides additional comparative perspective that enriches the analysis of the Bangladesh case.

In Kenya, the 2010 constitution explicitly incorporated the concept of "basic structure" through its Article 1, which declares the sovereignty of the people and which courts have interpreted as limiting Parliament's amendment power in ways that parallel the Indian and Bangladeshi doctrines. The Kenyan Supreme Court's 2017 election annulment decision, which invalidated the presidential election result on grounds of electoral administration failure, represents the most dramatic application of this broader principle: courts taking an active role in enforcing the substantive conditions for democratic elections, not merely the formal procedures.

The Kenyan example is particularly interesting for Bangladesh because it illustrates how the basic structure doctrine can be applied to electoral governance in ways that go beyond the formal protection of constitutional provisions. The Kenyan court's reasoning in the 2017 case drew on the constitutional principles of free and fair elections and treated the failure of the Independent Electoral and Boundaries Commission to conduct the election in accordance with its own constitutional mandate as a fundamental constitutional violation. This reasoning parallels the Bangladesh Appellate Division's approach in the March 2026 judgment, which treats the manipulation of electoral administration as a threat to the constitutional basic structure rather than merely a regulatory failure.

In Colombia, the Constitutional Court has developed a version of the basic structure doctrine through its concept of "substitution of the constitution," holding that constitutional amendments that replace the fundamental principles of the existing constitution with something essentially different go beyond the limits of the amendment power. The court's application of this doctrine to invalidate constitutional changes that extended President Uribe's tenure and concentrated power in the executive has been cited as one of the most important applications of the doctrine in Latin America.

These comparative examples suggest that the basic structure doctrine, far from being a peculiarity of South Asian constitutional law, represents a broader trend in constitutional jurisprudence toward judicial engagement with the protection of democratic fundamentals. The specific content of the basic structure varies across legal systems, reflecting the different constitutional cultures and historical experiences of different societies, but the underlying logic is

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consistent: that democratic constitutions contain commitments so fundamental that they cannot be eliminated through the ordinary amendment process without destroying the constitutional identity that gives the amendment process its legitimacy.

CHAPTER FORTY: THE SOCIOLOGY OF CONSTITUTIONAL CRISES: POLITICAL CULTURE, INSTITUTIONAL TRUST, AND THE CONDITIONS FOR DEMOCRATIC GOVERNANCE

40.1 Political Culture and Democratic Governance: The Bangladesh Case

The political science literature on democracy has long grappled with the relationship between political culture and democratic governance, asking whether democratic institutions can function effectively in societies that lack the cultural foundations, the civic values, the intersubjective norms, that Tocqueville identified as the basis for American democracy's vitality. The cultural approach to democratic theory, associated with scholars like Robert Putnam, Gabriel Almond, and Sidney Verba, argues that stable democracy requires a specific civic culture characterized by civic engagement, trust in institutions, tolerance for political difference, and a disposition to participate in collective decision-making.

Bangladesh presents a challenging case for this cultural approach. By most measures of civic culture, Bangladesh's political culture is deeply adversarial, characterized by intense partisan loyalty, a winner-takes-all approach to political competition, low levels of trust in institutions, and a tendency toward extra-legal resolution of political conflicts. These cultural features are not accidental; they are products of Bangladesh's specific history of colonial rule, post-independence political violence, military dictatorship, and the accumulated experience of governance failure that has repeatedly demonstrated that legal and institutional channels cannot be relied upon to provide justice or accountability.

At the same time, Bangladesh's political culture also contains resources that the adversarial analysis can miss: a strong tradition of popular engagement in political life (turnout in competitive elections has consistently been high), a vibrant civil society that includes effective advocacy organizations across multiple domains, a free press tradition that has survived significant political pressure, and a demonstrated capacity for the kinds of mass mobilization that can force political change, as the 1971 Liberation War, the 1990 movement against Ershad, and the 2024 student uprising all attest.

The August 2024 uprising provides particularly interesting evidence about the character of Bangladesh's political culture. The uprising was led by young people, predominantly students, who had grown up entirely under a single-party-dominant political system and had never personally experienced democratic alternation. Their demand was not the restoration of some idealized past democratic order but the creation of a fundamentally different institutional framework that would provide genuine accountability. This forward-looking, institution-focused political demand reflects a more sophisticated political culture than the purely adversarial characterization would suggest.

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40.2 Institutional Trust and Its Erosion: The Dynamics of Constitutional Crisis

The concept of institutional trust, the degree to which citizens believe that state institutions will act in accordance with their professed purposes and the rules that govern them, is central to understanding both the causes of Bangladesh's recurring constitutional crises and the conditions for their resolution. When institutional trust is low, citizens behave strategically rather than cooperatively in their interactions with institutions, anticipating that others will defect from institutional norms and adjusting their own behavior accordingly. This creates self-fulfilling prophecy dynamics in which low trust produces low compliance, which in turn validates the original low trust, in a negative spiral that is difficult to reverse.

Bangladesh's constitutional crises have been, in important respects, crises of institutional trust. The 2006 to 2007 crisis was fundamentally a trust crisis: the Awami League's refusal to participate in elections under the caretaker government headed by President Iajuddin Ahmed reflected a judgment that the caretaker system had been captured by partisan interests and could no longer be trusted to provide the neutral oversight that was its constitutional purpose. The 2024 uprising was similarly a trust crisis: the Hasina government had so thoroughly destroyed public trust in the electoral system, the judiciary, the police, and the civil service that millions of young people concluded that only extra-institutional action could produce change.

The sociology of institutional trust suggests that rebuilding trust after its collapse is an exceptionally demanding task that requires not merely institutional reform but a sustained demonstration of reformed behavior over time. Institutions that have been captured by partisan interests and have failed to perform their constitutional functions cannot simply be redesigned on paper; they must demonstrate through consistent performance, over many years, that the new design produces different behavior in practice.

This sociological insight has important implications for the assessment of the Fakhruddin period's institutional reform legacy. The reforms of the caretaker period addressed many of the formal institutional failures that had produced the trust crisis, but they could not, in two years, produce the sustained track record of institutional performance that genuine trust-building requires. The subsequent erosion of many of the institutional improvements under the post-2008 governments confirmed this analysis: reforms that depend on political will for their continuation will be reversed when political incentives change, unless they are deeply enough embedded in institutional culture and citizen expectations to survive.

40.3 Civil Society, Media, and the Accountability Ecosystem

The academic literature on democratic governance increasingly emphasizes the importance of the "accountability ecosystem," the combination of formal accountability mechanisms (elections, courts, legislative oversight, audit institutions) and informal accountability mechanisms (free press, civil society advocacy, academic research, international monitoring) that together constrain governmental power and ensure that officials are held responsible for their conduct.

Bangladesh has a rich accountability ecosystem in terms of the number and diversity of its civil society organizations, media outlets, and academic institutions. The NGO sector, which includes

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organizations with operational capacity and policy expertise that often exceeds that of the state, is among the most developed in the developing world. The print and online media, despite significant political pressure, has maintained a degree of independence and critical capacity. Academic institutions, particularly economics think tanks like the Centre for Policy Dialogue, have provided high-quality policy analysis that has shaped both domestic and international understanding of Bangladesh's development trajectory.

The limitations of this accountability ecosystem are, however, also significant. The formal accountability institutions, particularly the judiciary, the Anti-Corruption Commission, and parliamentary oversight mechanisms, have been chronically weak and have frequently been captured by partisan interests. The media has faced increasing state pressure and self-censorship, particularly during periods of political tension. And civil society organizations, which are heavily dependent on foreign funding, are vulnerable to regulatory harassment through the NGO Affairs Bureau when they take positions critical of the government.

The post-August 2024 transition has had a mixed impact on the accountability ecosystem. On one hand, the removal of the Hasina government has opened space for civil society and media activities that had been effectively suppressed. On the other hand, civil society continues to document arbitrary arrests, press freedom violations, and attacks on religious minorities CIVICUS LENS under the Yunus interim government, suggesting that the improvement in civic space has been incomplete and that old patterns of state behavior toward civil society have not been fully transformed.

Press freedom remains severely threatened, with the interim government revoking the accreditation of 167 journalists, and around 140 journalists viewed as aligned with the previous regime having faced charges, forcing many into hiding. CIVICUS LENS This pattern of selective media suppression, directed against journalists associated with the previous government, repeats a dynamic familiar from the Fakhruddin period, when media freedom was similarly restricted on the grounds that specific journalists were associated with the partisan interests that the transitional government was attempting to overcome.

CHAPTER FORTY-ONE: THE FAKHRUDDIN PERIOD IN COMPARATIVE PERSPECTIVE: A SYNTHESIS

41.1 What Makes Bangladesh's Case Distinctive

Having examined a wide range of comparative material, it is now possible to identify the distinctive features of Bangladesh's constitutional situation that set it apart from the comparative cases examined and that shape the specific lessons the Bangladesh experience can offer.

The most distinctive feature of Bangladesh's situation is the combination of democratic aspiration and institutional weakness in a densely populated, resource-poor society that has nonetheless achieved remarkable development outcomes on certain dimensions (mortality reduction, gender empowerment, microfinance innovation) despite governance failures that

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should, by some theories, have prevented such progress. This combination creates a genuine puzzle: why has Bangladesh been able to achieve so much in some areas of social and economic development while failing so thoroughly to construct the institutional foundations for durable democratic governance?

The answer lies partly in the nature of the development achievements themselves. Bangladesh's success in poverty reduction, child mortality reduction, and female empowerment has been driven primarily by non-state actors: the enormous NGO sector, particularly BRAC and the Grameen Bank network, the export garment industry that has been driven primarily by private market forces, and the remittances of overseas workers that have provided macroeconomic stability despite governance failures. These achievements did not require effective democratic governance; they required effective non-state institutions and market mechanisms operating in a permissive rather than a supportive governance environment.

Democratic governance, by contrast, is inherently a public goods problem: it requires collective action among political actors to establish and maintain the institutional arrangements that benefit everyone but that each individual actor has incentives to defect from. In Bangladesh's specific political environment, where the two major political parties regard each other as existential threats rather than legitimate competitors, the collective action problem of democratic governance has been extraordinarily difficult to solve. The Thirteenth Amendment caretaker system was one attempt to solve it by removing the government from control of elections, but its vulnerability to manipulation illustrated the limits of institutional solutions to problems rooted in the political culture of mutual distrust and winner-takes-all competition.

41.2 The Technocratic Interlude in Comparative Perspective

Fakhruddin Ahmed's tenure as the head of a technocratic transitional government can be situated within a broader comparative pattern of technocratic interludes that have occurred in various countries when normal democratic politics has become incapable of addressing serious governance failures.

The technocratic interludes of Greece and Italy during the 2011 to 2012 European debt crisis, when technocratic governments led by former central bankers Lucas Papademos and Mario Monti were installed to manage emergency fiscal adjustment programs, provide an interesting comparative case from the European democratic tradition. These governments, like Fakhruddin Ahmed's, were headed by individuals with strong international financial credentials and without significant domestic political bases. They enjoyed strong support from international financial institutions and European Union partners, and they pursued economic reform agendas that elected governments had been unable to implement.

The European technocratic interludes were, however, much more limited in scope and duration than Bangladesh's caretaker period: they were explicitly temporary arrangements designed to manage a specific economic emergency, not comprehensive governance reforms, and they operated under much tighter democratic oversight (the technocratic governments remained accountable to elected parliaments) than the Fakhruddin government, which operated without any elected oversight during most of its tenure.

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The comparison illuminates a fundamental tension in the theory of technocratic governance: the conditions under which technocratic expertise is most useful (severe governance failure, deep political polarization, the need for politically difficult reforms) are precisely the conditions under which the democratic accountability constraints that legitimate technocratic governance are most difficult to maintain. In Bangladesh's case, the absence of electoral accountability during the caretaker period allowed the government to pursue reforms that elected governments had been unable to undertake, but it also removed the constraints that might have prevented the anti-corruption campaign's worst procedural excesses.

41.3 The Democratic Consolidation Agenda: What Remains Undone

The comparative analysis of this Part, set against the Bangladesh-specific analysis of the preceding Parts, allows a comprehensive assessment of what the Fakhruddin period achieved and what remains undone in Bangladesh's democratic consolidation agenda.

The achievements are real and significant. The biometric voter registration system, which survives and has been enhanced, provides a foundation for electoral credibility that Bangladesh lacked before the caretaker period. The judicial separation reform, while imperfect and partially eroded, established an institutional principle that has survived multiple political transitions and that the post-uprising judiciary is now building on. The reconstituted Anti-Corruption Commission, despite its politicized enforcement record, represents an institutional improvement over its predecessor that provides a platform for better performance under more favorable political conditions.

What remains undone is, however, much more substantial. The political culture of winner-takes-all competition, mutual existential fear between the major parties, and the expectation that political power will be used to harm opponents rather than to serve citizens, has not been fundamentally changed by any of the institutional reforms of the caretaker period. The economic governance challenge, the relationship between business interests and political power that sustains systemic corruption, has been addressed only at the margins. The gender representation failure, most dramatically illustrated by the five percent female candidacy rate in the February 2026 elections, reflects a political culture that continues to exclude women from meaningful political participation despite formal constitutional commitments to equality.

The constitutional reform agenda of 2024 to 2026, which represents a more comprehensive attempt at institutional redesign than anything the Fakhruddin period undertook, addresses many of these remaining challenges at least formally. The July National Charter contains 84 reform recommendations, including 48 constitutional amendments, addressing executive term limits, judicial independence, electoral governance, oversight institutions, and decentralization. Journal of Democracy But the history of Bangladesh's institutional reforms provides ample grounds for caution about the gap between formal constitutional design and actual institutional practice.

41.4 The International Dimension: Sovereignty, Engagement, and Democratic Support

Bangladesh's experience with international engagement during the Fakhruddin period and its aftermath raises fundamental questions about the relationship between international support for

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democratic governance and national sovereignty that do not have simple answers but that deserve careful analysis.

The international community's support for the Fakhruddin government, through financial assistance, technical cooperation, and political recognition, was significant in sustaining the transitional arrangement through its two years in office. The Yunus government appointed fifteen independent commissions of experts to recommend reforms across key state institutions GIGA, a process that drew on international expertise and international norms in ways that reflected the continued importance of international engagement in Bangladesh's governance reform.

At the same time, the international community's support for the Fakhruddin government was not unconditional, and the concerns that international human rights organizations raised about emergency detentions, media restrictions, and the anti-corruption campaign's procedural fairness reflected the genuine tensions between the international community's interest in a credible electoral transition and its commitment to the human rights principles that the emergency period violated.

The February 2026 elections and referendum were characterized by the European Union as "the biggest democratic process of 2026," Global Voices reflecting the international community's continued investment in Bangladesh's democratic development. The referendum's simultaneous conduct with the parliamentary election was unprecedented in Bangladesh's history and represented a genuinely complex democratic exercise that tested the capacity of the electoral administration system in significant ways.

The international community's assessment of the February 2026 elections will itself be an important dimension of the post-election governance environment, providing a framework for holding the new BNP government to account for its management of the constitutional reform process and for its treatment of civil society, media, and political opposition. The stakes of this accountability relationship are high: the 2026 Bangladesh election is both a statement of democratic hope and a reminder of democratic weakness. Minute Mirror

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CHAPTER FORTY-TWO: CONCLUSIONS OF PART FOUR: THE BANGLADESH MODEL AND ITS SIGNIFICANCE FOR COMPARATIVE CONSTITUTIONAL THEORY

42.1 What Bangladesh Contributes to Comparative Constitutional Theory

The Bangladesh experience, examined through the comparative lens of this Part, contributes several important insights to comparative constitutional theory that go beyond the specific case.

The first contribution is an unusually clear illustration of how formal constitutional provisions can be both necessary and insufficient for democratic governance. The Thirteenth Amendment's caretaker system addressed a genuine constitutional deficiency in Bangladesh's electoral

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framework, but its formal provisions could not prevent the system from being captured by partisan interests when the political will to maintain its integrity was absent. The lesson is not that formal constitutional provisions do not matter; they clearly do. It is that formal provisions must be embedded in broader institutional and cultural environments that provide the political will and the accountability mechanisms necessary for their effective implementation.

The second contribution is a concrete case study of the relationship between technocratic governance and democratic legitimacy in a developing country context. The Bangladesh case suggests that technocratic transitional governance can provide genuine value in situations of severe democratic failure, but that its value depends critically on the quality of the specific institutional reforms it pursues and on its commitment to transferring power to elected successors. The Fakhruddin government's general faithfulness to its transitional mandate, reflected in its preparation and oversight of genuinely competitive elections, provides a model for how technocratic governance can be combined with a genuine commitment to democratic restoration.

The third contribution is an empirical illustration of democratic backsliding that provides important material for the theoretical literature on this phenomenon. Bangladesh's trajectory from 2009 to 2024, from a state of improving democratic governance following the credible 2008 elections to a state of advanced competitive authoritarianism by 2024, followed the theoretical mechanisms identified in the democratic backsliding literature with unusual clarity and comprehensiveness. The specific mechanisms of judicial capture, electoral manipulation, civil society harassment, and media control that the Hasina government employed are documented in sufficient detail to provide rich material for theoretical analysis.

The fourth contribution is an example of how popular uprisings can reverse democratic backsliding, and of the specific conditions under which such reversals prove durable or ephemeral. The August 2024 uprising's success in removing the Hasina government, followed by the careful transitional management of the Yunus interim government and the credible February 2026 elections, represents a reasonably successful democratic reversal in comparative terms. Whether it produces durable democratic consolidation will depend on factors that the comparative literature has identified: the depth of institutional reform, the quality of the new government's democratic performance, the development of accountability mechanisms that work independently of specific political actors, and the evolution of a political culture that treats democratic competition as a cooperative rather than a zero-sum enterprise.

42.2 The Relevance of the Fakhruddin Period for Bangladesh's Constitutional Future

The Fakhruddin period's relevance for Bangladesh's constitutional future is, ultimately, a function of whether its lessons have been absorbed and whether its institutional contributions have been sustained and built upon. The evidence from the 2024 to 2026 reform process suggests that the lessons have been partially absorbed: the July National Charter's proposals for a reformed caretaker system, for judicial independence, for anti-corruption enforcement, and for electoral administration reform all reflect the specific institutional failures that the Fakhruddin period's experience illuminated.

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The institutional contributions of the caretaker period, particularly the biometric voter registration system and the judicial separation reform, have proven more durable than many of the immediate governance improvements, confirming the pattern identified in the comparative literature that institutional reforms are more likely to be sustained than policy reforms when political incentives change.

The broader democratic consolidation challenge that the Fakhruddin period was designed to address, producing a Bangladesh in which democratic governance is stable, competitive, and trustworthy, remains substantially unachieved. The February 2026 elections have restored the formal conditions for democratic competition, but the deeper transformation of Bangladesh's political culture, institutional framework, and governance incentive structure that genuine consolidation requires will take much longer and will demand the sustained effort of many governments, civil society organizations, and citizens over many years.

The story of Fakhruddin Ahmed and the caretaker government of 2007 to 2008 is, in this larger narrative, one important chapter: a chapter in which a technocrat of unusual ability and integrity took on the enormous challenge of managing a democratic transition in conditions of deep political crisis, achieved important institutional improvements, left a legacy that was in some respects undermined and in others sustained by subsequent political developments, and whose significance has been retrospectively affirmed, though with important qualifications, by the constitutional adjudication of 2025 and 2026.

Part Five of this textbook will bring the full weight of all the preceding analysis to bear on the contemporary moment, examining the specific challenges and opportunities that the post-2026 election Bangladesh faces, assessing the prospects for democratic consolidation in the light of the theoretical frameworks that this and the preceding Parts have engaged, and drawing out the full implications of the Fakhruddin story for thinking about governance, legitimacy, and democratic development in Bangladesh and beyond.

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End of Part Four: Comparative Constitutional Frameworks, Democratic Transitions, and the International Dimensions of the Fakhruddin Period

Part Five: Democratic Consolidation, Contemporary Relevance, and the Future of Bangladeshi Constitutionalism will follow in the final volume of this series.

PART FIVE: DEMOCRATIC CONSOLIDATION, CONTEMPORARY RELEVANCE, AND THE FUTURE OF BANGLADESHI CONSTITUTIONALISM

Volume Five: The Legacy, the Reckoning, and the Road Forward

FOREWORD TO PART FIVE

The preceding four Parts of this textbook have traced an arc of remarkable scope and depth. We began, in Part One, with the biographical formation of Fakhruddin Ahmed, a child of Munshiganj whose intellectual development in the crucible of late colonial Bengal, post-Partition Pakistan, and newly independent Bangladesh equipped him with the analytical tools, the institutional knowledge, and the moral seriousness that his extraordinary moment in history would demand. We moved, in Part Two, through the economic dimensions of his career, examining how his work at the World Bank, at Bangladesh Bank, and at the Palli Karma-Sahayak Foundation gave him an unusually comprehensive understanding of the relationship between financial institutions, development policy, and the material conditions of ordinary people. Part Three took us deep into the legal and constitutional architecture of the caretaker period, examining the emergency powers, the anti-corruption legislation, the electoral law reforms, and the constitutional jurisprudence that the period generated, and the retrospective adjudications of 2025 and 2026 that have reframed the constitutional significance of that era. Part Four broadened the canvas to comparative constitutional analysis, positioning Bangladesh's experience within global frameworks of transitional governance, democratic backsliding, competitive authoritarianism, and democratic recovery.

Part Five now undertakes the final and in many ways most demanding task: synthesizing all of this analysis into a comprehensive assessment of what the Fakhruddin period means, what it has contributed, what it failed to deliver, and what lessons it holds for Bangladesh's constitutional future and for the broader project of democratic governance in the developing world. This synthesis is made more complex, and in many ways more urgent, by the fact that Bangladesh's constitutional story continues to unfold at a remarkable pace. The February 2026 elections and referendum, the formation of the BNP government under Tarique Rahman, the immediate controversy over the Constitutional Reform Council, and the ongoing litigation challenging the validity of the July National Charter Implementation Order all constitute live constitutional

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events that demand analysis in real time, even as this textbook seeks to situate them within the longer historical and theoretical arc that the preceding Parts have established.

Part Five is organized across fifteen chapters. It begins with an account and analysis of the post-election constitutional moment that Bangladesh inhabits as of March 2026, examining the specific challenges and opportunities that the new political configuration presents. It then moves through a series of substantive thematic inquiries, each of which examines a particular dimension of the democratic consolidation challenge through the combined lenses of theory, comparative experience, and the specific legacies of the Fakhruddin period. It concludes with a philosophical synthesis that situates the entire experience within the broadest available frameworks of political philosophy, constitutional theory, and the theory of democratic governance.

Throughout, the reader will be asked to hold in mind both the specific historical figure of Fakhruddin Ahmed and the broader questions of governance, legitimacy, and democratic theory that his career and tenure illuminate. The two levels of analysis are inseparable: without the specific case, the theoretical analysis floats free of the particular; without the theoretical frameworks, the biographical narrative remains merely anecdotal. It is the combination of the two that gives this textbook its distinctive character and, we hope, its distinctive value.

CHAPTER FORTY-THREE: THE POST-ELECTION CONSTITUTIONAL MOMENT: BANGLADESH IN FEBRUARY AND MARCH 2026

43.1 The February 12, 2026 Elections and Referendum: An Unprecedented Constitutional Event

On 12 February 2026, the people of Bangladesh participated in what the Journal of Democracy described as one of the most institutionally consequential votes in any postauthoritarian democratic transition in recent memory. More than 127 million eligible voters were presented with two ballots simultaneously: a white ballot to elect members to the 13th Jatiya Sangsad, and a pink ballot to endorse or reject the July National Charter Constitutional Reform Implementation Order 2025. The simultaneity of these two exercises was not merely an administrative convenience. It represented a fundamentally novel constitutional design, compressing into a single day of democratic participation two distinct acts of sovereign will: the choice of who would govern, and the authorization of the institutional architecture within which governance would operate.

The results were in several respects remarkable. The Bangladesh Nationalist Party, led by Tarique Rahman operating from exile in London, secured a decisive two-thirds supermajority in parliament, returning to power for the first time in seventeen years. Voter turnout reached approximately 60 percent, a figure that represented a genuine expression of popular engagement with the democratic process after years of manufactured electoral outcomes and systemic voter suppression under the Hasina government. Perhaps most significantly, 61 percent of voters endorsed the July National Charter, providing what the Yunus interim government characterized as a popular mandate for the sweeping constitutional reforms that the Charter proposed.

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These outcomes require careful constitutional analysis, and that analysis must begin with an honest acknowledgment of their complexity. The BNP's supermajority was, on one level, a straightforward expression of the popular will in a competitive election. It reflected the years of suppression that the party had endured under the Hasina government, the organizational energy generated by opposition in adversity, and the BNP's historically strong roots in rural constituencies. But it also reflected the absence of the Awami League, which was effectively excluded from participation in the electoral process, and the fragmentation of the political landscape between the BNP, Jamaat-e-Islami, and the newly formed National Citizens' Party that had emerged from the student movement of 2024. An election conducted in the absence of a major political party that had received 48 percent of the vote in 2008 cannot be regarded as a fully representative expression of the national political community, however genuine the election's procedural conduct.

The referendum outcome presents its own analytical challenges. The 61 percent approval rate for the July National Charter was a substantial majority, but the specific mechanism of the referendum raised serious questions about its informational quality and therefore its legitimacy as an exercise of informed popular consent. Voters received a pink ballot containing approximately 185 words of dense constitutional language covering four complex proposals, and were asked to answer a single yes-or-no question covering the entire package. No detailed explanation appeared on the ballot itself. No opportunity existed to approve some reforms while rejecting others. Legal scholars immediately raised the question of whether a yes-or-no vote on a package of 84 reform proposals, many of them technically complex and some of them genuinely contested among political parties, could constitute the kind of informed and differentiated popular consent that democratic theory requires for changes of such fundamental importance.

The Bangladeshi scholar Sara Hossain, writing for ConstitutionNet in March 2026, identified these concerns with particular precision, noting that the referendum mechanism had been designed to translate the political legitimacy of the July 2024 uprising into constitutional authority, but that this translation was necessarily imperfect because the specific contents of the July Charter were not the product of the uprising itself but of a subsequent process of political negotiation that not all affected parties had participated in fully. The Awami League, representing a constituency whose support had stood at approximately 19 percent in September 2025 polling, was excluded from the negotiation process that produced the Charter, a fact that compromised the Charter's claim to represent a genuine national constitutional consensus.

43.2 The BNP Government and the Constitutional Reform Council: An Immediate Crisis

The post-election period generated an immediate and deeply revealing constitutional controversy. When the newly elected members of parliament were sworn in, they were asked to take two oaths: the standard pledge to uphold the Constitution of Bangladesh, and a second oath binding them to respect and implement the July National Charter 2025. The BNP's newly elected members of parliament took the first oath but refused the second, triggering a constitutional impasse of considerable significance.

The constitutional architecture established by the July National Charter Implementation Order required the formation of a Constitutional Reform Council composed of MPs who had also taken

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the oath as council members. Because more than two-thirds of MPs, primarily those from the BNP, declined the second oath, the Constitutional Reform Council could not be constituted. Only MPs from Jamaat-e-Islami, the National Citizens' Party, and a small number of other parties who had taken the second oath were technically eligible to sit on the Council. This created a constitutional standoff in which the implementation of the reform package endorsed by 61 percent of voters was effectively blocked by the party that had itself won 67 percent of parliamentary seats.

The BNP's position was not without coherent constitutional logic. The party had maintained throughout the pre-election period that constitutional reforms of the magnitude proposed in the July Charter should be implemented through ordinary constitutional processes, that is, through a two-thirds parliamentary majority vote on specific constitutional amendment bills, rather than through the novel mechanism of a pre-election referendum that bound MPs to specific outcomes before they had taken their seats. The BNP argued that its supermajority gave it both the electoral mandate and the constitutional authority to implement whatever reforms it deemed appropriate through established parliamentary procedures, and that it should not be bound by oaths taken at the direction of an unelected interim government.

This position expressed, in contemporary constitutional vocabulary, a classic tension in democratic constitutional theory: the tension between popular sovereignty expressed through referendum mechanisms and parliamentary sovereignty expressed through representative institutions. The BNP effectively claimed that parliamentary sovereignty should take precedence, that an elected parliament with a supermajority represented the most legitimate locus of constitutional decision-making, and that the pre-election referendum, however approved, could not override the democratic mandate of an elected legislature.

The opposition parties, particularly Jamaat-e-Islami and the NCP, argued the contrary: that the referendum represented a direct expression of popular will that transcended parliamentary sovereignty, and that a parliament that refused to implement a constitutionally endorsed reform package was violating the democratic mandate that the simultaneous referendum had established. Khandakar Tahmid Rejwan, a lecturer in global studies and governance at the Independent University, Bangladesh, characterized the resulting disagreement as carrying "the potential to evolve into a major point of contention in the coming months, particularly between the BNP and the Jamaat-led alliance."

The immediate constitutional impasse of March 2026 thus illustrated, with painful clarity, one of the central challenges of democratic consolidation that the theoretical literature has long identified: the difficulty of designing institutional mechanisms for constitutional change that command the ongoing compliance of all major political actors, not merely at the moment of their negotiation but through the subsequent process of implementation. The July Charter had been designed, through the National Consensus Commission process, to achieve cross-party endorsement sufficient to survive the electoral transition. But the BNP's post-election refusal to take the second oath demonstrated that formal endorsement of a reform framework and genuine commitment to its implementation are not the same thing.

43.3 The Constitutional Challenge: Litigation and Judicial Review

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Even as the political drama of the Constitutional Reform Council unfolded, the courts were drawn into the constitutional controversy. A writ petition was filed challenging the constitutional validity of both the July National Charter Implementation Order and the referendum mechanism itself. The High Court Division admitted the petition and issued a Rule Nisi, directing the relevant authorities to explain why the Implementation Order and the letter issued by the Parliament Secretariat regarding the second oath should not be declared unconstitutional.

The arguments advanced in the petition touched on fundamental questions of constitutional law that the Bangladesh Supreme Court had been grappling with, in various forms, throughout its history. The petitioners argued, inter alia, that the Implementation Order, issued by the President acting on the advice of an unelected interim government, was beyond the constitutional framework because it purported to create binding constitutional obligations without following the amendment procedures specified in Article 142 of the Constitution, which requires a two-thirds parliamentary majority for constitutional changes. The petition also challenged the referendum mechanism as constitutionally unauthorized, arguing that the Constitution of Bangladesh does not provide for referendums as instruments of constitutional change, and that the Interim Government's creative use of presidential ordinance-making powers to establish the referendum was an impermissible circumvention of the constitutional amendment process.

These arguments engaged directly with questions about the sources and limits of constituent power, questions that had been at the center of Bangladesh's constitutional jurisprudence since the Anwar Hossain case of 1989. The constitutional adjudication that followed would represent the latest chapter in a long and complex judicial engagement with the fundamental problem of how a constitution can be legitimately changed, who has the authority to change it, and what constraints apply to that authority even in moments of revolutionary political transformation.

The litigation also connected the post-2026 constitutional moment to the broader jurisprudential trajectory that had been established by the Masdar Hossain case, the 2011 judgment on the Thirteenth Amendment, and the retrospective adjudications of 2025 and early 2026 that had reexamined the constitutional status of the Fakhruddin caretaker period. The Bangladesh Supreme Court in 2026 found itself navigating a constitutional landscape that had been fundamentally shaped by the decisions of its predecessors, and its handling of the post-election constitutional controversies would itself become part of the continuing constitutional tradition that future courts and future generations would be required to interpret.

43.4 The International Response: Recognition, Assessment, and Caution

The international community's response to the February 2026 elections and referendum was broadly positive but carefully calibrated. The European Union characterized the elections as "the biggest democratic process of 2026," a formulation that reflected genuine appreciation for the scale and complexity of what Bangladesh had undertaken while also acknowledging, through its careful phrasing, that the process was a democratic exercise rather than a democratic achievement. International election observation missions generally assessed the polling day conduct as credible, noting improvements in electoral administration relative to the deeply flawed 2014 and 2018 elections, while also registering concerns about the political environment

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in which the elections had been conducted, including the exclusion of the Awami League and the ongoing restrictions on some forms of political expression.

The World Bank and International Monetary Fund, whose continuing engagement with Bangladesh was essential to the country's macroeconomic stability, issued assessments that recognized the electoral transition as a positive development while emphasizing the importance of maintaining fiscal discipline, pursuing structural economic reforms, and protecting the institutional independence of regulatory bodies during the political transition. These assessments reflected the international financial community's consistent interest in political stability as a precondition for sustainable economic development, an interest that had shaped their engagement with Bangladesh throughout the post-Fakhruddin period.

The United Nations' response was similarly calibrated, welcoming the electoral transition while noting the importance of inclusive governance, protection of minority rights, and accountability for the human rights violations committed both during the Hasina government's later years and during the interim government period. The UN's concern about accountability was sharpened by documented reports from human rights organizations about abuses during the Yunus interim period, including arbitrary arrests of Awami League members and supporters, restrictions on press freedom, and what some observers characterized as a replacement of one form of politically motivated use of state power with another.

These international responses collectively illustrated the fundamental challenge of democratic transition assessment: the difficulty of distinguishing between the formal conditions for democratic governance (competitive elections, peaceful transfer of power, constitutional processes) and the deeper conditions for democratic consolidation (genuine accountability, protection of minority rights, institutional independence, political culture that accepts democratic competition as a cooperative rather than zero-sum enterprise). Bangladesh in March 2026 clearly satisfied many of the formal conditions while leaving significant questions about the deeper conditions unanswered.

CHAPTER FORTY-FOUR: THE FAKHRUDDIN LEGACY REASSESSED: RETROSPECTIVE ADJUDICATION AND HISTORICAL MEMORY

44.1 The November 2025 and March 2026 Judgments: Constitutional Retrospection

The constitutional adjudications of late 2025 and early 2026 that revisited the Fakhruddin caretaker period represent one of the most jurisprudentially significant exercises in retrospective constitutional analysis in Bangladesh's history. These judgments, coming nearly two decades after the events they addressed, raised fundamental questions about the relationship between historical constitutional moments and their later legal interpretation, about the proper role of courts in assessing the legitimacy of governmental arrangements that operated under conditions of emergency and crisis, and about how the basic structure doctrine should apply to transitional governance arrangements that did not conform to ordinary constitutional procedures.

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The 2011 judgment of the Appellate Division, which declared the Thirteenth Amendment's caretaker government system unconstitutional while simultaneously condoning all actions of the Fakhruddin government for "the sake of state and its people," had established a peculiar constitutional position: that the Fakhruddin government was both unconstitutional in its extended duration and validated in its substantive acts. This position, which legal scholars immediately recognized as jurisprudentially strained, reflected the court's practical judgment that retroactive invalidation of all government acts over a two-year period would produce intolerable legal chaos, while its simultaneous declaration of unconstitutionality was necessary to establish the constitutional principle that governments, including caretaker governments, cannot exceed their constitutionally mandated terms.

The retrospective adjudications of 2025 and 2026, coming in the context of the Yunus interim government's constitutional reform process, revisited this jurisprudence with fresh analytical frameworks and the benefit of historical distance. The courts' engagement with questions about the basic structure doctrine, the limits of emergency powers, and the conditions under which extraordinary governance arrangements can claim constitutional legitimacy, generated a body of constitutional reasoning that substantially enriched Bangladesh's constitutional jurisprudence.

The key doctrinal contribution of the 2025 and 2026 adjudications was their treatment of free and fair elections as a fundamental feature of the constitutional basic structure, a feature that no constitutional amendment and no extraordinary governmental arrangement could lawfully eliminate or systematically undermine. This proposition, derived from the basic structure doctrine that the Bangladesh courts had been developing since the Anwar Hossain case, had profound implications for the assessment of the Fakhruddin period. On one hand, it provided retrospective constitutional justification for the caretaker government's extended tenure insofar as that tenure was necessary to restore the conditions for genuinely free and fair elections. On the other hand, it established a constitutional framework that could be used to evaluate the Fifteenth Amendment's abolition of the caretaker system, which the adjudications identified as a violation of the constitutional basic structure precisely because it removed the institutional mechanism that had been designed to protect the freeness and fairness of elections.

44.2 The Paradox of Retrospective Constitutionalism

The constitutional paradox that the retrospective adjudications generated deserves sustained philosophical analysis. The courts were, in effect, engaged in a form of constitutional time-travel, applying doctrinal frameworks developed in 2025 and 2026 to events that had occurred in 2007 and 2008, and using the results of that assessment to legitimate a set of constitutional reforms designed to govern Bangladesh's constitutional future. This is not a straightforwardly coherent jurisprudential enterprise, and understanding its complexities requires engagement with some of the most fundamental questions in constitutional theory.

The basic structure doctrine itself is an instrument of retrospective constitutional reasoning. When courts identify certain features of a constitution as part of its "basic structure" and therefore immune from amendment, they are making a claim about the constitution's essential identity, about what makes it the constitution it is rather than some other constitutional document. But this claim is necessarily retrospective in the sense that it identifies basic structure

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features by reference to the constitution's original design and purposes, which must themselves be reconstructed through historical and philosophical interpretation. The more time has passed since the constitution's adoption, and the more the constitutional text and institutional practice have diverged from the original design, the more difficult and contestable this retrospective reconstruction becomes.

The Bangladesh Supreme Court's identification of free and fair elections as a basic structure feature was, in 2025 and 2026, both compelling and contestable. It was compelling because the constitution's commitment to democratic governance was clearly fundamental to its original design, as expressed in the four state principles of nationalism, socialism, democracy, and secularism that the 1972 framers inscribed in the preamble. It was contestable because the specific institutional mechanism of the caretaker government system, which the Thirteenth Amendment had established as the vehicle for protecting electoral integrity, was itself a product of constitutional amendment rather than original constitutional design, raising the question of whether the mechanism could be identified as part of the basic structure or only the underlying value it was designed to serve.

This distinction between mechanism and value has important practical consequences. If free and fair elections are a basic structure feature, then any constitutional arrangement that systematically undermines free and fair elections is constitutionally invalid, regardless of whether it maintains the specific institutional mechanism of the caretaker system. The Hasina government's abolition of the caretaker system through the Fifteenth Amendment was, on this analysis, unconstitutional not because it changed the mechanism but because the subsequent electoral practice under the Hasina government demonstrated that the abolition of the mechanism had the effect of systematically undermining free and fair elections in practice. The constitutional problem was not formal but functional: the Fifteenth Amendment was constitutionally defective because it produced constitutionally defective elections.

44.3 Historical Memory and Constitutional Legitimacy: How Bangladesh Remembers Fakhruddin

The retrospective constitutional adjudications were taking place within, and contributing to, a broader process of historical memory construction through which Bangladesh was reassessing its recent past in light of the 2024 uprising and its aftermath. The way that Bangladesh collectively remembered and evaluated the Fakhruddin period was being actively contested and renegotiated in public discourse, in academic writing, in political rhetoric, and in constitutional jurisprudence.

Three distinct narratives about the Fakhruddin period competed in this public discourse. The first, which might be called the heroic technocratic narrative, emphasized the genuine institutional achievements of the caretaker period: the separation of the judiciary, the biometric voter registration system, the credible 2008 elections. This narrative, which had been relatively strong during the period immediately following the 2008 elections, had been partially suppressed during the Hasina government period, when the official line tended to minimize the positive contributions of the caretaker government in order to avoid legitimating the institutional framework through which it had operated.

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The second narrative, which might be called the critical emergency narrative, emphasized the constitutional violations of the caretaker period: the prolonged emergency, the due-process failures in the anti-corruption campaign, the attempted manipulation of political party leadership through the "minus-two" formula. This narrative found support both in the Supreme Court's 2011 observation that the caretaker government's extended tenure was "absolutely unconstitutional" and in the human rights organizations' contemporaneous documentation of due process violations during the emergency period.

The third narrative, which became increasingly influential in the period following the 2024 uprising, situated the Fakhruddin period within a longer history of institutional failure and democratic collapse, using it as a case study in the possibilities and limits of technocratic governance as a response to democratic crisis. This narrative was more ambivalent than either of the first two, recognizing both the genuine institutional contributions and the genuine constitutional costs of the caretaker period, and drawing lessons from both for the design of institutional reforms capable of preventing future democratic breakdowns.

The Yunus interim government's constitutional reform process engaged with all three narratives, drawing selectively on each in constructing its reform agenda. The July Charter's proposals for a reformed caretaker system explicitly drew on the lessons of the Fakhruddin period, acknowledging both that some form of transitional governance mechanism was constitutionally necessary to protect electoral integrity and that the specific design of the 2007 to 2008 arrangement had produced institutional costs that a better-designed system should seek to avoid.

44.4 The Scholarly Reassessment: Development Economics, Institutional Theory, and Statecraft

Independent of the constitutional adjudications and the public political discourse, the academic literature on Bangladesh's institutional development and democratic trajectory was undergoing its own reassessment of the Fakhruddin period in light of the events of 2024 to 2026. This reassessment drew on the expanding literature on democratic backsliding and democratic recovery, on the scholarship on technocratic governance in developing countries, and on the growing body of empirical research on the specific institutional impacts of the caretaker government's reforms.

Development economists examining the relationship between institutional reform and economic outcomes had, by 2025, accumulated sufficient evidence to draw some tentative conclusions about the long-term economic significance of the caretaker period's institutional reforms. The judicial independence reforms, while partially reversed in their implementation during the Hasina government period, had established institutional precedents and developed judicial human capital that proved important in the post-2024 legal environment. The biometric voter registration system had proven genuinely durable, surviving multiple changes of government and providing a foundation for the credible administration of subsequent elections, including the February 2026 polls. The Anti-Corruption Commission's institutional framework, though weakened during the Hasina period, had survived as a formal institution and provided a basis for the accountability efforts of the Yunus interim government.

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Political scientists examining the dynamics of democratic backsliding found in the post-caretaker period a particularly clear case study of how institutional reforms undertaken during transitional periods can be systematically undermined when power returns to political actors whose interests are threatened by those reforms. The Hasina government's systematic erosion of judicial independence, electoral integrity, and anti-corruption enforcement between 2009 and 2024 provided a textbook illustration of the mechanisms through which competitive authoritarianism gradually consolidates itself by capturing or disabling the institutional checks that democratic governance requires.

Constitutional scholars examining the long-term jurisprudential significance of the caretaker period found in the retrospective adjudications of 2025 and 2026 a rich body of constitutional reasoning that extended and developed the constitutional doctrines that the caretaker period had helped to generate. The basic structure doctrine, the doctrine of necessity, the constitutional framework for emergency powers, and the constitutional standards for transitional governance had all been significantly enriched by the litigation and adjudication that the caretaker period had produced, and the 2025 and 2026 judgments had brought this constitutional reasoning to a new level of sophistication.

CHAPTER FORTY-FIVE: DEMOCRATIC CONSOLIDATION THEORY AND THE BANGLADESH CASE: ASSESSING THE PROSPECTS

45.1 What Democratic Consolidation Requires: The Theoretical Framework

The theory of democratic consolidation, which has been one of the most productive research programs in comparative politics since the Third Wave of democratization in the 1970s and 1980s, offers a rich conceptual framework for assessing Bangladesh's current situation and its prospects. The foundational analysis of Juan Linz and Alfred Stepan, developed in their landmark 1996 work Problems of Democratic Transition and Consolidation, identifies five interconnected arenas that must develop their own autonomous institutional logic in order for democratic consolidation to occur: civil society, political society, the rule of law, the state apparatus, and economic society. Consolidation, on this analysis, is not a single achievement but a sustained process of institutional development across all five arenas simultaneously, a process that can be reversed or disrupted if any one arena fails to develop the institutional quality that democratic governance requires.

The Bangladesh case of 2026 presents a mixed and complex picture when assessed against this framework. In the arena of political society, the February 2026 elections restored competitive electoral politics after fifteen years in which genuine electoral competition had been progressively eliminated. The BNP's decisive victory and the relatively peaceful transfer of power from the Yunus interim government represented a genuine achievement of democratic transition. But the exclusion of the Awami League from the electoral process, the ongoing litigation challenging the constitutional validity of the referendum, and the immediate post-election dispute over the Constitutional Reform Council all indicated that the political society arena remained fragile and contested.

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In the arena of civil society, the picture was similarly mixed. The student movement that had driven the 2024 uprising represented a genuine and powerful mobilization of civil society energy, demonstrating that Bangladeshi citizens retained the capacity for collective political action even after years of authoritarian repression. The formation of the National Citizens' Party from the student movement's leadership represented an attempt to translate civil society energy into institutional political participation. But the Yunus government's period in office had also generated credible reports of civil society restrictions, including the revocation of accreditation of 167 journalists, charges against numerous journalists and media figures, and arbitrary arrests of opposition supporters, suggesting that the institutional conditions for a genuinely free and pluralistic civil society remained uncertain.

In the arena of the rule of law, the intensive constitutional litigation of 2025 and 2026 demonstrated both the vitality of Bangladesh's legal culture and the ongoing contestation of fundamental constitutional principles. Courts were being asked to adjudicate questions of the highest constitutional importance, and they were doing so with genuine analytical seriousness. But the institutions of law enforcement and criminal justice, which had been systematically corrupted during the Hasina period and which had been used instrumentally by the Yunus interim government in ways that human rights organizations documented with concern, remained deeply problematic, and the rule of law in the ordinary sense of consistent, impartial, rights-respecting legal administration was far from consolidated.

In the arena of the state apparatus, the reforms undertaken by the Yunus interim government had made some progress in improving institutional capacity and reducing the most egregious forms of partisan capture. The Election Commission's improved performance in administering the February 2026 elections was the most visible achievement. But the police, the judiciary, the public administration, and the intelligence services all retained deep structural problems rooted in decades of partisan politicization that could not be substantially transformed in eighteen months of interim governance.

In the arena of economic society, Bangladesh's economic trajectory remained fundamentally sound in its structural dimensions, with the ready-made garment sector continuing to generate export earnings and employment, remittances from the Bangladeshi diaspora providing essential household income support, and the microfinance sector continuing to extend credit to poor households. But the economic instability generated by the 2024 political crisis, combined with global inflationary pressures, had created real economic stress for ordinary Bangladeshis, and the new BNP government faced the challenge of managing economic expectations while simultaneously pursuing the constitutional reform agenda.

45.2 The Democratic Backsliding Literature and Its Lessons for Bangladesh

The democratic backsliding literature, which has expanded enormously since the late 2010s in response to documented declines in democratic quality across a wide range of countries, offers a complementary theoretical framework for understanding both Bangladesh's recent history and its future prospects. Steven Levitsky and Daniel Ziblatt's 2018 analysis of how democracies die identified four key indicators of authoritarian behavior: rejection of democratic rules of the game, denial of the legitimacy of political opponents, toleration or encouragement of violence,

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and readiness to curtail civil liberties of opponents. Applied to the Hasina government's trajectory between 2009 and 2024, all four indicators were clearly present and progressively intensifying.

Milan Svolik's theoretical analysis of the conditions under which democratic norms survive or collapse emphasizes the importance of the commitment problem: democratic governance requires that all major political actors commit to accepting electoral outcomes even when those outcomes are unfavorable to them. When political actors calculate that the costs of accepting electoral defeat are too high, perhaps because of credible fears of persecution, prosecution, or exclusion, the commitment to democratic norms collapses and the logic of authoritarian self-entrenchment takes over. The Bangladesh case illustrates Svolik's mechanism with particular clarity: the escalating cycles of political persecution and counter-persecution, in which each party in power used state institutions against its opponents and each opposition party feared that accepting electoral defeat would mean imprisonment and political destruction, had created a dynamics that made genuine democratic competition progressively more difficult to sustain.

The theoretical implication of Svolik's analysis for post-2026 Bangladesh is sobering. The constitutional and institutional reforms proposed in the July Charter address many of the structural conditions that enabled the Hasina government's authoritarian consolidation: executive term limits, judicial independence, reformed electoral administration, strengthened anti-corruption enforcement. But structural reforms cannot by themselves resolve the commitment problem that Svolik identifies. That problem requires the development of a political culture in which major political actors genuinely accept that democratic competition is preferable to authoritarian self-entrenchment even when the costs of democratic defeat are high. Such a cultural transformation cannot be legislated or constitutionally mandated. It must develop, if it develops at all, through the accumulated experience of repeated democratic competition in which the incentives for authoritarian behavior are consistently and credibly punished.

45.3 Transitional Justice and the Accountability Challenge

One of the most difficult and theoretically contested challenges that Bangladesh's post-2026 democratic consolidation faces is the question of transitional justice: how to address the serious human rights violations committed both by the Hasina government during its fifteen years in power and by the security forces during the brutal repression of the 2024 uprising. The accountability challenge is particularly acute because the Hasina government's repression, in which more than 800 and possibly as many as 1,400 people were killed in the July and August 2024 uprising, demands a justice response that is both substantial enough to be credible and principled enough to avoid becoming itself a form of politically motivated persecution.

The transitional justice literature, from Ruti Teitel's foundational 2000 analysis to the more recent work of scholars like Pablo De Greiff and Naomi Roht-Arriaza, identifies several mechanisms through which post-authoritarian societies can address past abuses: criminal prosecution of individual perpetrators, truth commissions, reparations programs, lustration policies, and institutional reform. Each mechanism has its own logic, its own strengths and limitations, and its own relationship to the goals of accountability, truth, reconciliation, and institutional transformation that transitional justice processes are designed to serve.

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Bangladesh's approach to these questions during the Yunus interim period was characterized by intensive criminal prosecution of Awami League members, former ministers, and security officials, combined with more limited progress on truth-telling, reparations, and the deeper institutional reforms that genuine transitional justice requires. Human rights organizations documented concerns that the prosecutorial process was proceeding without adequate due process protections, that the net was being cast so widely as to sweep up individuals whose culpability was minimal along with those whose responsibility was grave, and that the political dynamics of the transition were shaping the justice process in ways that compromised its integrity.

The theoretical challenge for Bangladesh's transitional justice process is to distinguish between accountability, which is a genuine requirement of democratic consolidation, and politically motivated persecution, which undermines the principle of equal application of law that democratic governance requires. This distinction is, in practice, extraordinarily difficult to maintain when the political actors responsible for designing and administering the justice process are themselves parties with strong interests in the outcomes. The establishment of genuinely independent judicial mechanisms, protected from political interference, is a prerequisite for a credible transitional justice process, and the reform of judicial independence was therefore both a transitional justice requirement and a democratic consolidation requirement simultaneously.

45.4 Sequencing and Prioritization: The Democratic Reform Agenda

The democratic consolidation literature has generated extensive debate about the proper sequencing of institutional reforms in post-transition societies. One influential strand of thought, associated with scholars like Fareed Zakaria and Thomas Carothers, emphasizes the importance of establishing the rule of law before attempting comprehensive electoral democratization, arguing that elections held in the absence of adequate legal and institutional foundations tend to produce illiberal democracy or outright competitive authoritarianism rather than genuine democratic governance. An alternative strand, associated with scholars like Philippe Schmitter and Terry Lynn Karl, emphasizes that elections, even imperfect elections, create accountability mechanisms and legitimacy constraints that are essential for democratic development, and that deferring elections in favor of prior institutional development can itself become a mechanism for the entrenchment of unaccountable transitional governance.

Bangladesh's experience after 2007 provides empirical material relevant to both sides of this debate. The Fakhruddin government's decision to extend the caretaker period well beyond the constitutionally mandated 90 days in order to undertake institutional reforms before holding elections reflected, implicitly, the logic of the rule-of-law-first position: the argument that credible elections required institutional foundations that could not be built overnight. The 2008 elections, universally recognized as the freest and fairest in Bangladesh's history, provided some empirical vindication for this approach.

But the subsequent trajectory of Bangladeshi democracy under the Hasina government demonstrated the limits of the rule-of-law-first approach: institutional improvements made during the caretaker period proved vulnerable to political reversal once competitive electoral politics resumed and the incentives for institutional capture reasserted themselves. The

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constitutional and institutional reforms of the 2007 to 2008 period were not sufficiently embedded in political culture, in judicial practice, or in the everyday behavior of state officials to survive sustained pressure from a government determined to undermine them.

The lesson for Bangladesh's post-2026 constitutional moment is that institutional reforms are necessary but not sufficient for democratic consolidation. What is also required is the development of political norms, informal rules of the game, that shape the behavior of political actors even in the absence of formal institutional enforcement. These norms, which include respect for electoral outcomes, acceptance of the legitimacy of political opponents, commitment to constitutional limits on governmental power, and willingness to maintain the independence of institutions even when that independence is politically inconvenient, are the foundation on which democratic governance ultimately rests. They cannot be established by constitutional amendment or by institutional reform alone. They must develop through the accumulated experience of political competition conducted, however imperfectly, in accordance with democratic principles.

CHAPTER FORTY-SIX: THE JURISPRUDENCE OF LEGITIMACY: CONSTITUTIONAL PHILOSOPHY IN A POST-CRISIS STATE

46.1 Legitimacy as a Constitutional Category

The concept of legitimacy is, in one sense, the most fundamental concept in political and constitutional philosophy, and yet it is also one of the most contested and analytically difficult. From Max Weber's classic distinction between traditional, charismatic, and legal-rational legitimacy through to contemporary debates in deliberative democratic theory, political philosophers have struggled to specify precisely what makes a claim to governmental authority legitimate, as opposed to merely powerful, and what the consequences of a legitimacy deficit are for the obligations of citizens and officials toward political institutions.

For Bangladesh's constitutional situation in 2026, the concept of legitimacy operates at several distinct levels, each requiring its own analytical attention. There is the legitimacy of specific governmental arrangements, such as the Fakhruddin caretaker government and the Yunus interim government, each of which operated without the electoral mandate that democratic theory ordinarily treats as a necessary condition of legitimate rule. There is the legitimacy of the constitutional reform process, which was conducted partly by an unelected interim government and partly through a referendum mechanism whose design raised serious questions about whether voters could exercise genuinely informed and differentiated consent. And there is the deeper legitimacy of Bangladesh's constitutional order as a whole, which has been constructed through multiple episodes of amendment, emergency, military intervention, and judicial adjudication in ways that have left its foundational principles contested and its institutional design imperfect.

These different levels of legitimacy are interconnected but not identical, and the analytical task requires distinguishing between them carefully. An individual governmental act can be procedurally legitimate, conducted in accordance with applicable legal rules, without being

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substantively legitimate, producing outcomes that respect the rights and interests of those subject to governmental authority. An interim government can be procedurally irregular, not having obtained its mandate through elections, while being substantively legitimate in the sense of governing in ways that respect constitutional values and prepare the conditions for the restoration of democratic governance. Constitutional amendments can be procedurally valid, having been adopted through the prescribed supermajority procedures, while being substantively illegitimate in the sense of violating the basic structure principles that define the constitutional order's essential character.

46.2 The Natural Law Tradition and Constitutional Legitimacy

The Western natural law tradition, which traces its lineage from classical antiquity through medieval scholasticism to contemporary human rights theory, provides one important framework for thinking about constitutional legitimacy. On natural law accounts, the authority of positive law, including constitutional law, is conditional on its conformity with higher moral standards that transcend any particular legal system. Positive laws that violate these higher standards are, from a natural law perspective, not truly law at all but rather commands that may be obeyed out of prudence but cannot claim the moral authority of genuine law.

Applied to the Bangladesh constitutional situation, natural law reasoning provides a basis for evaluating the legitimacy of constitutional arrangements independently of their procedural conformity with existing constitutional rules. The Hasina government's systematic manipulation of elections, capture of the judiciary, and suppression of political opposition were, on a natural law account, illegitimate not because they necessarily violated specific procedural requirements of the Bangladesh Constitution (though they often did) but because they violated the fundamental moral requirements of just governance, the requirements that governments respect the political rights of citizens, operate within limits imposed by law, and remain accountable to those they govern.

Natural law reasoning also provides a framework for evaluating the legitimacy of revolutionary or transformative constitutional moments like the one Bangladesh experienced in 2024. The uprising that overthrew the Hasina government was, in formal terms, an extralegal act: it achieved political change through popular force rather than through the constitutional procedures for governmental change. But natural law tradition, from the medieval theorists through John Locke to contemporary human rights scholars, has consistently recognized that when governments so thoroughly violate the basic requirements of just governance as to forfeit their claim to legitimate authority, the people retain an inherent right to resist and ultimately to replace them. The July 2024 uprising, in which more than 800 people died resisting a government that had eliminated effective electoral accountability, represents a paradigm case of this natural law right of revolution.

The difficult theoretical question is how to make the transition from revolutionary legitimacy, which is necessarily backward-looking in the sense of being grounded in the illegitimacy of what was overthrown, to constitutive legitimacy, which is forward-looking in the sense of establishing new institutional arrangements capable of commanding ongoing popular allegiance. This transition is difficult in any post-revolutionary context, and it is particularly difficult when the

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revolutionary moment, however morally justified, cannot itself be the foundation of a sustainable constitutional order.

46.3 Deliberative Democratic Theory and Bangladesh's Constitutional Reform Process

Deliberative democratic theory, which has been one of the most productive research programs in democratic theory since the 1990s, offers a particularly relevant framework for evaluating Bangladesh's constitutional reform process. The deliberative tradition, associated with theorists including Jurgen Habermas, Seyla Benhabib, James Bohman, and Amy Gutmann, holds that democratic legitimacy derives not merely from majority voting but from the quality of the deliberative process through which decisions are made. Decisions are legitimate, on deliberative accounts, when they result from processes of inclusive, informed, and reason-giving public deliberation in which all affected parties have genuine opportunities to participate.

Evaluated against this deliberative standard, Bangladesh's July Charter reform process presents a deeply mixed picture. On one hand, the National Consensus Commission process represented a genuine attempt to create a structured deliberative forum in which political parties could negotiate constitutional reform proposals. The commission convened deliberations among 33 political parties and alliances throughout 2025, producing a reform framework that achieved broad cross-party endorsement. The process of public consultation, expert commission work, and political negotiation that preceded the finalization of the July Charter represented a more genuinely deliberative approach to constitutional reform than anything Bangladesh had previously undertaken.

On the other hand, the National Consensus Commission process had significant deliberative deficiencies. The exclusion of the Awami League from meaningful participation, however understandable from the perspective of political management, meant that a constituency representing a substantial portion of the electorate had no genuine voice in the constitutional reform process. The deliberation was also structured in ways that privileged the perspectives of organized political parties over those of civil society organizations, academic experts, and ordinary citizens, particularly those from marginalized communities such as ethnic minorities, religious minorities, and rural women.

The referendum mechanism used to authorize the July Charter's constitutional changes was, deliberatively speaking, particularly problematic. A yes-or-no vote on a package of 84 reform proposals is not a deliberative exercise in any meaningful sense. Genuine deliberation requires the opportunity to distinguish between proposals, to weigh their merits and costs, to engage with competing arguments, and to arrive at differentiated judgments about different questions. The packaging of all 84 proposals into a single binary question effectively eliminated the deliberative dimension of the constitutional authorization process, replacing genuine informed popular reasoning with a forced choice between endorsing the entire package or rejecting it entirely.

46.4 Rawlsian Justice and Constitutional Fundamentals

John Rawls's theory of justice, and particularly his later work on political liberalism and the idea of public reason, provides another important theoretical framework for evaluating Bangladesh's

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constitutional situation. Rawls's concept of constitutional essentials, which refers to the basic political rights and liberties and the basic guarantees of equal opportunity that any just constitutional framework must secure, provides a standard for assessing whether a constitutional order meets the minimum requirements of justice.

Applied to Bangladesh, Rawlsian analysis identifies several constitutional essentials that the country's constitutional development must secure: genuine political equality (the equal right to vote and to run for office, with fair electoral processes), basic liberties of conscience, speech, and association, the separation of governmental powers sufficient to prevent any single actor from dominating the political process, and equal opportunity to access the institutions of political life regardless of religion, ethnicity, or gender.

The Bangladesh Constitution, in its formal text, contains provisions that satisfy all of these Rawlsian requirements. The constitutional problem is that the gap between formal constitutional commitment and institutional practice has repeatedly been so wide as to render the formal provisions largely meaningless. The Hasina government's treatment of political opponents, its manipulation of elections, and its capture of judicial and regulatory institutions represented a systematic violation of the constitutional essentials that Rawlsian theory identifies as fundamental, regardless of whether these violations were dressed up in the formal language of constitutional amendment and legal procedure.

The July Charter's reform proposals, assessed from a Rawlsian perspective, largely address the right constitutional essentials: executive term limits address the problem of executive dominance; judicial independence reforms address the capture of the rule of law; electoral reforms address political equality; the proposed upper chamber and proportional representation elements address the problem of majority-party dominance and minority representation. The challenge, as always in constitutional theory, is translating formal constitutional provision into genuine institutional practice.

CHAPTER FORTY-SEVEN: THE POLITICAL ECONOMY OF DEMOCRATIC REFORM: BETWEEN DEVELOPMENT AND DEMOCRACY

47.1 The Development-Democracy Relationship Revisited

One of the most enduring debates in comparative politics concerns the relationship between economic development and democratic governance. The modernization theory tradition, associated with scholars such as Seymour Martin Lipset, Daniel Lerner, and Walt Rostow, held that economic development was both a necessary and a sufficient condition for democratic governance, that countries would become democratic as they became richer. This thesis, while subject to sustained empirical and theoretical critique, has retained significant influence in policy circles and in the international development community's approach to governance support.

The Bangladesh case provides important empirical material for this debate. Bangladesh's economic development trajectory since the 1990s, which has been one of the most remarkable

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stories of sustained economic growth and poverty reduction in the developing world, has not been accompanied by a corresponding development of democratic governance. GDP per capita growth, declining poverty rates, improving health and education indicators, and the success of the ready-made garment sector as an engine of economic transformation have all proceeded in ways largely disconnected from the trajectory of democratic quality. The most rapid period of economic growth and poverty reduction, roughly 2010 to 2020, coincided with progressive deterioration in democratic quality under the Hasina government.

This empirical pattern is consistent with the critique of modernization theory developed by scholars including Eva Bellin and Dankwart Rustow, who argued that economic development and democracy are not automatically linked, and that the specific class interests, institutional histories, and political choices that accompany development are more important than the aggregate level of economic growth in determining democratic outcomes. In Bangladesh's case, the economic growth of the Hasina period benefited certain economic elites, particularly those connected to the garment industry, the construction sector, and the financial sector, who had strong incentives to support a stable political environment even at the cost of democratic quality. This pattern of economic interests aligning with authoritarian stability rather than democratic development is a recurring feature of competitive authoritarianism in developing countries.

47.2 Fakhruddin Ahmed's Development Economics and the Governance-Growth Nexus

Fakhruddin Ahmed's intellectual formation in development economics had equipped him with a sophisticated understanding of the relationship between governance quality and economic development that was, in important respects, ahead of the dominant thinking of his era. The mainstream development economics of the 1960s and 1970s, which focused primarily on capital formation, technology transfer, and structural transformation, paid relatively little attention to the quality of governance institutions as a determinant of development outcomes. It was only in the 1990s, with the work of Daron Acemoglu, James Robinson, Douglas North, and others who emphasized the foundational importance of institutions in determining long-run economic performance, that the governance-growth nexus became central to development theory.

Fakhruddin Ahmed's World Bank career, which extended from 1978 through the late 1990s, coincided with the period during which the World Bank was itself grappling with the relationship between governance and development. The Bank's 1997 World Development Report, titled The State in a Changing World, marked a watershed moment in which the international development community moved away from the simple market-versus-state framing of the Washington Consensus and toward a more nuanced appreciation of the importance of effective and accountable state institutions for sustainable development. Fakhruddin Ahmed's career was shaped by this intellectual evolution, and his practical engagement with governance reforms during the caretaker period reflected an understanding of the development-governance nexus that was theoretically sophisticated by the standards of his time.

His approach to economic management during the 2007 to 2009 period reflected this understanding in practical terms. The food and fuel price crises of 2007 to 2008, which coincided with global commodity price shocks, required careful macroeconomic management that balanced the need to contain inflation with the developmental imperative of maintaining food access for

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poor households. The caretaker government's handling of these crises, which combined targeted subsidy programs with monetary policy adjustments and international assistance, was generally regarded as competent by macroeconomic standards while falling short of the structural reforms that would have been necessary to reduce Bangladesh's vulnerability to external shocks in the longer term.

The fiscal management of the caretaker period established a pattern of macroeconomic discipline that was one of the caretaker government's genuine contributions to Bangladesh's economic development. The subsequent Hasina government, for all its failures of democratic governance, maintained broadly sound macroeconomic management during its first two terms, and the macroeconomic stability that Bangladesh enjoyed through much of the 2009 to 2020 period owed something to the fiscal and monetary frameworks that the caretaker period had consolidated.

47.3 The Garment Sector and Democratic Development: A Complex Relationship

The ready-made garment (RMG) sector occupies a unique position in Bangladesh's political economy, and understanding its relationship to democratic development is essential for any comprehensive assessment of Bangladesh's constitutional future. The sector, which by 2025 employed approximately 4 million workers, predominantly women, and generated roughly 80 percent of Bangladesh's export earnings, has been one of the primary engines of economic growth, poverty reduction, and social transformation in Bangladesh over the past three decades.

The relationship between the garment sector and democratic governance is, however, deeply ambivalent. On one hand, the sector's success has been based on stable macroeconomic conditions, reliable contract enforcement, and effective trade relationships that require a degree of governance competence and institutional reliability that democratic governments are in principle better positioned to provide than authoritarian ones. The sector's buyers and brands, responding to international consumer pressure about supply chain conditions, have also been important forces for improved labor standards and factory safety, creating external accountability mechanisms that supplement, however imperfectly, the domestic accountability mechanisms that democratic governance provides.

On the other hand, the garment sector's interests have not always aligned with democratic development. The sector's owners, organized through the Bangladesh Garment Manufacturers and Exporters Association (BGMEA), constitute one of the most powerful economic interest groups in Bangladesh, and their relationship with successive governments has been characterized by a pragmatic accommodation of political arrangements that maintain stable export conditions regardless of their democratic quality. The Hasina government's relationship with BGMEA was particularly close, reflecting a mutual accommodation between political power and economic interest that provided stability for garment exports while insulating the sector from the accountability pressures that might otherwise have promoted improved labor conditions and more equitable distribution of the sector's gains.

The post-2026 political economy of the garment sector will be an important indicator of the BNP government's approach to the development-democracy relationship. If the new government's

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relationship with BGMEA replicates the pattern of the Hasina period, with economic interests accommodated at the cost of labor rights and democratic accountability, the developmental model will have changed its political color without changing its fundamental character. If, instead, the new government's economic policy combines export-oriented growth with genuine improvement in labor standards, meaningful extension of workers' organizing rights, and more equitable distribution of economic gains, the post-2026 period may represent a genuine departure from the pattern of growth without democratization that characterized the Hasina years.

47.4 Microfinance, Social Capital, and Democratic Development

Fakhruddin Ahmed's role as Managing Director of PKSF and his earlier engagement with microfinance during his World Bank career gave him an unusually deep understanding of the relationship between microfinance, social capital formation, and democratic development. The microfinance revolution in Bangladesh, pioneered by Grameen Bank and subsequently expanded through a network of microfinance institutions supported by PKSF, had, by the time Fakhruddin assumed the chief advisership, already demonstrated its capacity to reduce poverty, empower women economically, and build the dense networks of social organization and mutual accountability at the community level that Robert Putnam identified as the foundation of democratic civic culture.

The theoretical relationship between microfinance and democratic development is, however, more complex than simple optimism about poverty reduction and women's empowerment would suggest. The scholarship of scholars like Naila Kabeer on women's empowerment in Bangladesh's microfinance context suggests that economic empowerment through credit access does not automatically translate into political empowerment, that the organizational structures of microfinance can as easily reinforce existing social hierarchies as transform them, and that the specific design of microfinance programs and the broader social context in which they operate are crucial determinants of their empowerment effects.

More fundamentally, the massive expansion of microfinance in Bangladesh did not prevent the erosion of democratic quality under the Hasina government, a finding that suggests the limits of the social capital approach to democratic development when political institutions are actively working to undermine democratic norms and practices. The social capital generated by millions of microfinance groups provides a foundation of community organization and social solidarity that may prove valuable in the long-term development of a democratic civic culture, but it is not by itself sufficient to constrain the behavior of political actors who are determined to use state power to their partisan advantage.

CHAPTER FORTY-EIGHT: GENDER, REPRESENTATION, AND THE UNFINISHED CONSTITUTIONAL AGENDA

48.1 Women in Bangladesh's Political History: The Paradox of Leadership and Exclusion

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Bangladesh's political history presents one of the most striking paradoxes in the comparative study of gender and politics. The country has been governed, for most of the period since 1991, by two women: Sheikh Hasina of the Awami League and Khaleda Zia of the Bangladesh Nationalist Party. This pattern of female leadership at the very top of Bangladesh's political hierarchy has been widely noted as exceptional, not only in South Asia but globally, and has been used as evidence of women's political advancement in what is by many measures a relatively poor and gender-unequal society.

The paradox is that this exceptional record of female leadership at the summit of power has coexisted with, and in important respects been made possible by, a political system that systematically marginalizes women at every other level of political participation. The dynastic nature of both parties, which has meant that female leadership was achieved through inheritance of family political capital rather than through the development of broadly based women's political empowerment, has if anything reinforced the exclusion of women from political participation outside the narrow circles of party leadership. The pattern of "sultanism" that scholars like Eva Bellin have identified in Middle Eastern authoritarian politics, in which personal and family loyalty rather than democratic accountability structures political relationships, applies with striking clarity to Bangladesh's dominant party system, and it has specific and particularly damaging consequences for women's political participation.

The February 2026 elections confirmed and perhaps worsened this pattern. Women constituted only 4.22 percent of candidates in the 2026 elections, compared to 6.6 percent in the 2024 elections. The BNP, which won the election with a supermajority, nominated only 10 women among its 287 candidates, a mere 3.5 percent that fell short even of the modest 5 percent target the party had itself proposed during National Consensus Commission negotiations. This dramatic underrepresentation of women in the candidate pool, in an election that was celebrated as a milestone of democratic renewal, illustrated the gulf between formal constitutional commitment to gender equality and the actual practices of political parties in selecting and supporting candidates.

48.2 The July Charter's Gender Proposals and Their Limitations

The July National Charter contained several proposals addressing women's political representation, reflecting the recognition among the reform commission's members that gender equality was a fundamental dimension of democratic consolidation. The proposals included provisions for increasing women's direct representation in parliament, reforms to the reserved seats system (which provides for a certain number of parliamentary seats designated for women but allocated by party leadership rather than directly elected), and recommendations for party democracy rules that would require parties to meet minimum thresholds of women's representation in their internal leadership structures.

These proposals were genuinely more ambitious than anything that Bangladesh's constitutional reform process had previously generated on gender issues. The existing reserved seats system, which provides for 50 reserved seats for women in the 350-member Jatiya Sangsad allocated proportionally among parties based on their general seats, had been widely criticized by feminist scholars and activists as a mechanism that entrenches women's dependent status within party

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hierarchies rather than promoting their autonomous political agency. Women's organizations had long advocated replacing reserved seats with direct constituency-based elections for women, potentially through a system of women's constituencies or through mandatory alternation requirements in general constituencies.

The July Charter's proposals for gender representation reform were, however, characterized by the same procedural problems that affected the broader reform process: the proposals were developed primarily by expert commissions and political party representatives rather than through direct engagement with women's organizations and feminist activists, the specific mechanisms for implementation remained vague and subject to political negotiation, and the enforcement mechanisms for party democracy requirements were not clearly specified.

The theoretical literature on women's political representation, from Pippa Norris and Joni Lovenduski's foundational work on recruitment barriers through to more recent scholarship on gender quotas and their effects, identifies several key conditions for effective gender representation in legislatures: meaningful sanctions for non-compliance with representation requirements, placement requirements that ensure women are nominated in winnable constituencies rather than safe losses, party-level democracy requirements that give women equal voice in candidate selection, and broader social conditions, including affordable childcare and freedom from gender-based violence, that make it practically possible for women to seek and hold political office.

Bangladesh's political culture and social conditions present serious obstacles to all of these requirements. The political party culture in both major parties is deeply patriarchal, controlled by family networks and male party bosses whose support is essential for electoral success and who have historically shown little genuine commitment to advancing women's political careers outside the leadership families. The social conditions that make political participation practically possible for women, including freedom from domestic violence, flexible working arrangements, and social acceptance of women in public roles, are improving but remain inadequate.

48.3 The Fakhruddin Government's Gender Record

The Fakhruddin caretaker government's record on gender issues provides relevant historical context for assessing the post-2026 situation. The caretaker period's institutional reforms had a mixed gender dimension. On one hand, the improved electoral administration and biometric voter registration system benefited women voters, who faced specific barriers to voter registration and political participation under previous electoral arrangements. On the other hand, the anti-corruption campaign's sweep of politicians and public officials was conducted in ways that were largely gender-blind, ignoring the specific ways in which corruption intersects with gender, particularly in how the informal systems through which women access public services are embedded in corrupt relationships that impose particularly heavy burdens on poor women.

The caretaker government's overall approach to gender issues reflected the limitations of a technocratic governance model that focused primarily on formal institutional reform without adequately engaging with the social and cultural dimensions of inequality. The economic reforms of the period, including the continued support for microfinance and the emphasis on

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export-oriented growth through the garment sector, had significant positive impacts on women's economic status, but these economic gains were not accompanied by comparable advances in women's political representation or in the social conditions for women's political agency.

CHAPTER FORTY-NINE: THE CIVIL-MILITARY RELATIONSHIP AND CONSTITUTIONAL GOVERNANCE

49.1 The Military in Bangladesh's Constitutional History

The relationship between the military and civilian governance has been one of the defining structural features of Bangladesh's political history, and any serious analysis of the country's constitutional future must engage with this relationship in depth. The Bangladesh military has been a central actor in the country's constitutional development from the very beginning, from the Liberation War in which the military was created as an instrument of national independence, through the series of coups and counter-coups that defined the first decade of independence, to the "1/11" transition of 2007 in which the military's withdrawal of support from the Iajuddin caretaker government effectively enabled the installation of Fakhruddin Ahmed as Chief Adviser.

The theoretical framework for understanding civil-military relations in developing democracies has been substantially enriched by the scholarship of the last two decades. Samuel Huntington's classic model of subjective civilian control, in which military professionalism and political non-interference are cultivated as complementary values, has been supplemented by more recent analyses that recognize the inadequacy of the simple military-in-barracks/military-in-politics binary and the importance of understanding the specific institutional, social, and economic relationships through which military influence is exercised in ostensibly civilian political systems.

Rebecca Schiff's concordance theory of civil-military relations argues that stable civil-military relations require concordance, that is, agreement and cooperation, among three partners: the military institution, the political elite, and the citizenry. Applied to Bangladesh, the theory draws attention to the specific mechanisms through which the military's corporate interests, institutional culture, and political relationships have shaped the country's constitutional development, even in periods nominally characterized by civilian rule. The military's economic interests, embodied in a substantial portfolio of commercial enterprises managed through organizations such as the Army Welfare Trust and the Sena Kalyan Sangstha, give it institutional stakes in economic policy that are largely independent of its formal constitutional role, and these economic interests have historically influenced its political interventions and its relationships with civilian governments.

49.2 The "1/11" Transition and the Military's Constitutional Role

The "1/11" transition of January 2007, which brought Fakhruddin Ahmed to power, was explicitly characterized by its architects and defenders as a military-backed but civilian-led

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government of national salvation. The distinction between military-backed and military-led was constitutionally significant: it was designed to maintain the formal character of the constitutional caretaker framework, in which the Chief Adviser was a civilian figure with formal constitutional authority, while acknowledging the reality that the military's political support was the effective foundation of the caretaker government's authority.

This arrangement represented a specific model of civil-military relations that does not fit neatly into either the subordinate civilian control model or the direct military rule model. It was, rather, a form of what some scholars of military politics have called "tutelary democracy" or "guardianship": a system in which the military positions itself as the guarantor of constitutional order and the guardian of national interests, exercising political influence not through direct rule but through its capacity to withdraw support from civilian governments and to shape the conditions under which civilian governance operates.

General Moeen U. Ahmed, the army chief whose political role in the "1/11" transition was decisive, explicitly invoked guardianship reasoning in justifying the military's intervention: the political parties had failed to maintain the conditions for democratic governance, and the military's responsibility as the guardian of national security and constitutional order required it to intervene to prevent the country from sliding into chaos. This reasoning is familiar from the comparative literature on military guardianship, from Turkey's long history of military tutelage over civilian politics to Thailand's recurrent pattern of military coups followed by managed transitions to civilian governance.

The constitutional difficulty with guardianship arrangements is their fundamental incompatibility with the principle of democratic self-governance, which requires that citizens govern themselves through institutions they control rather than being governed by, or on behalf of, an institution that claims authority independent of popular consent. Even where military guardianship is invoked in response to genuine governance failures, as it was in Bangladesh in January 2007, the arrangement creates institutional precedents and political cultures that are deeply unfavorable to the long-term development of democratic accountability.

49.3 The Military After 2024: Institutional Position and Constitutional Implications

The role of the Bangladesh military in the post-2024 constitutional moment is complex and somewhat ambiguous. The military's behavior during the July 2024 uprising was initially consistent with its historical pattern of supporting the incumbent government against popular protest. But as the scale of the uprising and the intensity of popular feeling became apparent, the military eventually withdrew its active support from the Hasina government, a withdrawal that was crucial to enabling the political transition. This behavior was consistent with the pattern identified by scholars of democratic transitions in which military defection from the incumbent government is often the decisive factor in enabling regime change.

The army chief's public demand during late 2025 that elections be held by the end of 2025, which put pressure on the Yunus interim government to set an earlier election date than it had initially planned, demonstrated that the military continued to exercise political influence in ways that were not strictly consistent with the model of full civilian control. At the same time, the

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military's acceptance of the February 2026 elections and its apparent support for the democratic transition process suggested a genuine, if qualified, shift in institutional orientation toward civilian governance.

The BNP government's management of the civil-military relationship will be one of the critical tests of its democratic credentials. A government that maintains genuinely subordinate civilian control, that resists the temptation to use military support as a substitute for democratic legitimacy, and that actively develops the institutional mechanisms for civilian oversight of military conduct will be making a genuine contribution to democratic consolidation. A government that accommodates military institutional interests in exchange for political support, or that uses the military as an instrument against political opponents, will be reproducing the patterns of civil-military accommodation that have historically undermined democratic development in Bangladesh.

CHAPTER FIFTY: JUDICIAL INDEPENDENCE AND THE CONSTITUTIONAL COURT IN A DEVELOPING DEMOCRACY

50.1 The Theory of Judicial Independence: Functions and Requirements

Judicial independence is widely recognized in democratic theory as a foundational requirement of constitutional governance, but the concept is more complex and contested than it might initially appear. At its most basic, judicial independence means that judges decide cases according to law and legal principle rather than according to the preferences of political actors who might otherwise be in a position to reward or punish judicial decisions. But this simple formulation conceals a series of difficult questions about what judicial independence actually requires institutionally, how it can be developed and sustained in environments where political actors have strong incentives to undermine it, and what kinds of judicial behavior independence is meant to enable.

The theoretical literature on judicial independence distinguishes between several analytically distinct dimensions. Individual independence refers to the freedom of individual judges to decide cases according to their legal judgment without fear of personal consequences. Institutional independence refers to the capacity of the judicial institution as a whole to maintain its organizational integrity, resource base, and decisional authority in the face of political pressure. Functional independence refers to the freedom of courts to exercise their constitutional functions, including the review of legislation and executive action, without those functions being effectively nullified by political non-compliance.

Tom Ginsburg's pathbreaking comparative analysis of judicial review in new democracies emphasizes that judicial independence is not simply a matter of formal constitutional provision. Courts develop independence through the accumulation of a track record of decisions that political actors respect and comply with, through the building of a reputation for impartiality and legal seriousness that generates public and professional legitimacy, and through the development

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of institutional practices and judicial cultures that sustain independence even in the face of political pressure.

50.2 The Bangladesh Judiciary: A History of Contested Independence

The Bangladesh judiciary's history is a story of contested independence in which periods of relative judicial autonomy have alternated with periods of pronounced political subordination. The Masdar Hossain case of 1999, which resulted in the Supreme Court's order for the separation of the subordinate judiciary from executive control, represented a high point of judicial assertiveness in the defense of institutional independence. The Fakhruddin government's implementation of the Masdar Hossain judgment in 2007, establishing the formal separation of the subordinate judiciary, was one of the caretaker period's most significant institutional achievements.

But the subsequent trajectory of judicial independence under the Hasina government illustrated how quickly formal institutional improvements can be eroded when the political will to maintain them is absent. The Hasina government's influence over judicial appointments, particularly at the Supreme Court level, progressively compromised the independence of the judiciary in ways that became most visible in the constitutional adjudication of the 2011 Thirteenth Amendment case and in the subsequent conduct of the International Crimes Tribunal, which was criticized by international human rights organizations for procedural irregularities that reflected political pressure on the judicial process.

The retrospective adjudications of 2025 and 2026 represented an attempted restoration of judicial independence, in which a reconstituted Supreme Court reexamined and partially reversed the constitutional positions of its predecessors. This exercise in retrospective adjudication required extraordinary judicial courage, because it necessarily involved the court in evaluating not only the constitutional validity of political actions taken by earlier governments but also the institutional integrity of earlier judicial decisions. The court's willingness to engage in this retrospective examination was itself an expression of the kind of judicial independence that Bangladesh's constitutional development requires.

50.3 The July Charter's Judicial Reform Proposals

The July National Charter's proposals for judicial reform reflected both the lessons of the post-caretaker erosion of judicial independence and the aspirations of the constitutional reform commissions that had studied Bangladesh's judicial system in depth. The core proposals addressed judicial appointments, judicial accountability, the institutional structure of the Supreme Court, and the independence of the lower judiciary.

On appointments, the Charter proposed moving away from the existing system, in which Supreme Court judges are appointed by the President on the advice of the Prime Minister, toward a system involving a Judicial Appointments Commission with independent membership drawn from the legal profession, civil society, and the academic community, as well as from the existing judiciary and the government. This proposal reflected the recognition that the existing appointments system was structurally vulnerable to politicization, since Prime Ministers with

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legislative dominance could effectively pack the Supreme Court with judges sympathetic to their constitutional positions.

The theoretical basis for independent judicial appointments commissions is well-established in the comparative constitutional literature. The United Kingdom's Judicial Appointments Commission, established in 2005 following the Constitutional Reform Act, provides one model, though the specific design features appropriate for Bangladesh's constitutional context differ significantly from those appropriate for the Westminster system. The South African Judicial Service Commission, which combines judicial, political, and civil society representation in a more genuinely pluralist appointments process, provides another model that may be more relevant to Bangladesh's situation.

The Charter's proposals for judicial accountability, addressing the mechanisms through which judges who engage in misconduct, corruption, or flagrant disregard for legal principle can be removed from office, were necessarily more tentative. The tension between judicial independence and judicial accountability is one of the classic dilemmas of constitutional design: robust independence requires security of tenure and protection from politically motivated removal, but these same protections can shield genuinely corrupt or incompetent judges from the accountability that the public interest requires.

50.4 Constitutional Review and the Kelsen Model

The July Charter's proposals also addressed the institutional structure of constitutional review, specifically the question of whether Bangladesh should maintain its existing system of diffuse constitutional review (in which the Supreme Court exercises constitutional review as part of its general appellate jurisdiction) or move toward a system of concentrated constitutional review through a dedicated constitutional court modeled on the Kelsenian tradition of Central European constitutional courts.

The Kelsenian constitutional court model, developed by Hans Kelsen in the context of the 1920 Austrian Constitution and subsequently adopted by Germany, Spain, South Africa, and many other new democracies, concentrates constitutional review in a specialized court with a distinct institutional identity, separate appointment procedures, and exclusive jurisdiction over constitutional questions. The model's advocates argue that it promotes greater constitutional expertise, insulates constitutional adjudication more effectively from ordinary political pressures, and creates clearer institutional demarcation between constitutional and non-constitutional adjudication.

The diffuse review model, which Bangladesh has historically employed, integrates constitutional adjudication into the broader work of the Supreme Court and allows constitutional questions to arise in the context of specific disputes. Its advocates argue that this integration makes constitutional law more practically grounded in real social conflicts, that it avoids the creation of a specialized constitutional elite whose perspectives may be unrepresentative of the legal community as a whole, and that it is more consistent with the common law tradition within which Bangladesh's legal system is embedded.

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Bangladesh's constitutional reform commission ultimately recommended maintaining the diffuse review model while strengthening the specialized divisions within the Supreme Court that handle constitutional cases, improving the procedural framework for constitutional litigation, and introducing term limits for Supreme Court judges to reduce the concentration of judicial power in long-serving appointments. This recommendation reflected a pragmatic judgment that the transition costs of moving to a fully Kelsenian system would be high in Bangladesh's context, and that improvements within the existing framework could achieve the most important functional goals of the reform agenda.

CHAPTER FIFTY-ONE: THE ANTI-CORRUPTION STATE: THEORY, PRACTICE, AND REFORM IN POST-CRISIS BANGLADESH

51.1 Corruption as a Constitutional Problem: The Theoretical Revisited

The relationship between corruption and constitutional governance is one that the Bangladesh case illuminates with unusual clarity and depth, and it deserves sustained theoretical analysis in the context of the post-2026 reform agenda. Corruption, in the political science literature, is defined most commonly as the abuse of public office for private gain, but this simple definition conceals a complex phenomenon that takes many different forms, operates through many different institutional mechanisms, and has many different kinds of relationship to the overall quality of governance.

The political theory of corruption, from the classical republican tradition through Montesquieu, Madison, and contemporary public choice theory, has consistently identified corruption as a fundamental threat to republican governance because it subverts the basic requirement that public officials act in the public interest rather than in their private interest. But the contemporary empirical literature on corruption in developing countries, from Pranab Bardhan's foundational work through Mushtaq Khan's analysis of rent-seeking in South and Southeast Asia, has complicated this simple normative picture by demonstrating that corruption takes structurally different forms in different institutional environments, and that some forms of corruption, particularly those embedded in developmental states that are actively promoting economic transformation, may have different efficiency and developmental consequences than the simple principal-agent model of corruption suggests.

Susan Rose-Ackerman's comprehensive 1999 analysis of corruption and government remains the most thorough treatment of the relationship between corruption and democratic governance. Rose-Ackerman distinguishes between systemic corruption, which pervades governmental institutions and is embedded in the normal functioning of the state, and episodic corruption, which involves individual acts of bribery or theft that deviate from a broader institutional culture of integrity. Bangladesh's corruption problem, at the time of the Fakhruddin government and through the Hasina period, was clearly of the systemic rather than the episodic variety: corruption was not a departure from normal institutional behavior but a pervasive feature of how the state functioned, from the distribution of land titles at the local government level to the allocation of major procurement contracts at the central government level.

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51.2 The Anti-Corruption Commission: Institutional Performance and Reform

The Anti-Corruption Commission (ACC), established with enhanced independence during the Fakhruddin period, has been one of the most contested institutional legacies of the caretaker government. Its history since 2009 illustrates with particular clarity the vulnerability of independently established regulatory institutions to political capture when the political will to maintain their independence is absent.

The ACC was established under the Anti-Corruption Commission Act 2004, which was amended and strengthened during the Fakhruddin period to enhance its operational independence, investigative powers, and institutional resources. During the caretaker period, the ACC was notably active, pursuing a large number of corruption cases against prominent political figures, business leaders, and public officials. This activity generated both popular support, in a public deeply frustrated by decades of official corruption, and significant criticism, particularly from the due process perspective, since many of the cases were pursued with inadequate attention to evidentiary standards and procedural fairness.

Under the Hasina government from 2009 onward, the ACC's independence was progressively compromised. Political pressure on the commission's leadership, selective use of anti-corruption prosecution as an instrument against political opponents while protecting government allies, and amendments to the ACC's enabling legislation that reduced its operational autonomy all contributed to a progressive deterioration in the institution's effectiveness and credibility. By the time of the 2024 uprising, the ACC was widely perceived as an instrument of political persecution rather than a genuine anti-corruption body.

The post-2024 reform process addressed the ACC's institutional design through the Constitutional Reform Commission's recommendations, which proposed significant strengthening of the commission's independence, including parliamentary confirmation of its leadership through a qualified majority requirement designed to prevent any single party from controlling appointments, enhanced funding autonomy, and improved coordination with the Financial Intelligence Unit and other financial crime agencies.

51.3 Comparative Lessons: Anti-Corruption Institutions in International Perspective

Bangladesh's experience with anti-corruption institutions can be situated within a rich comparative literature on the conditions under which such institutions succeed or fail. Hong Kong's Independent Commission Against Corruption (ICAC), established in 1974 under colonial governance and maintained through the transition to Chinese sovereignty, is widely regarded as one of the world's most successful anti-corruption bodies, having transformed Hong Kong from a society in which corruption was pervasive in both public and private sectors to one of the least corrupt jurisdictions in the world. The ICAC's success is attributed to a combination of genuine institutional independence, substantial resources, a comprehensive mandate covering prevention and education as well as investigation and prosecution, and critically, sustained political support from the highest levels of governance over multiple decades.

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Singapore's experience with anti-corruption, managed through the Corrupt Practices Investigation Bureau (CPIB), provides a different model that has been effective in a very different political context. Singapore's success in containing corruption has been achieved through a combination of institutional enforcement, high public sector salaries designed to reduce incentives for bribe-taking, clear and consistently enforced anti-corruption norms, and a broader political culture of governance that treats public office as a genuine public trust.

Neither the Hong Kong nor the Singapore model translates directly to Bangladesh's context, for reasons that include Bangladesh's democratic political system (which provides greater opportunities for political interference than authoritarian Hong Kong or Singapore), its level of economic development (which creates stronger incentives for corruption as officials have fewer legitimate alternatives for advancing their economic interests), and its institutional history (which includes decades of pervasive corruption embedded in the normal functioning of state institutions rather than as a departure from institutional norms).

The most relevant comparative experiences for Bangladesh may be drawn from countries that have achieved significant but incomplete progress in reducing corruption within democratic political systems, such as Ghana, Uruguay, or the Czech Republic. These cases suggest that meaningful progress in corruption reduction is possible within democratic political systems, but that it requires sustained political commitment over multiple electoral cycles, institutional development that protects anti-corruption bodies from political interference, genuine accountability mechanisms that apply to governing parties as well as opposition parties, and a broader social movement of accountability that mobilizes civil society pressure in favor of anti-corruption norms.

51.4 The Yunus Interim Government's Anti-Corruption Record

The Yunus interim government's approach to anti-corruption provided mixed signals about the prospects for genuine institutional reform in this area. The prosecution of Awami League members and former officials for corruption charges was pursued with considerable energy, generating more than 400 investigations of former ministers and officials within the first year of the interim government's tenure. But this prosecutorial energy was accompanied by credible concerns that the process was being conducted selectively, that the due process standards applied to accused individuals were inadequate, and that the political dynamics of the transition were shaping prosecutorial decisions in ways that compromised the principle of equal application of law.

The theoretical tension between the imperatives of accountability and the requirements of due process in post-authoritarian transition is one of the most difficult challenges in transitional justice theory, and Bangladesh's experience illustrated it with painful clarity. Genuine accountability for the corruption and human rights violations of the Hasina period was both a moral requirement and a practical necessity for democratic consolidation: without credible accountability, the message sent to future governments would be that authoritarian behavior and systematic corruption can be practiced with impunity. But accountability conducted without adequate due process, through selective prosecution driven by political considerations, itself violated the rule of law principles that democratic consolidation requires.

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The resolution of this tension requires institutional rather than merely procedural solutions: what is needed is not simply more careful attention to due process in individual cases, but the development of genuinely independent prosecutorial and judicial institutions that can conduct accountability processes according to legal rather than political criteria. This institutional development is precisely what the July Charter's reform proposals aimed to achieve, and its success or failure will be one of the most important determinants of Bangladesh's long-term trajectory.

CHAPTER FIFTY-TWO: THE TECHNOCRATIC INTERLUDE AS A CONSTITUTIONAL CATEGORY: A THEORETICAL SYNTHESIS

52.1 Defining the Technocratic Interlude: Historical and Comparative Context

The Fakhruddin Ahmed government of 2007 to 2009 was, in comparative perspective, an instance of a distinctive form of governmental arrangement that has appeared with some regularity in the modern political history of developing democracies: what we might call the technocratic interlude. This is a governmental arrangement in which, during or immediately following a period of severe political crisis, authority is temporarily exercised by a body of technical experts whose claim to govern rests not on electoral mandate but on their professional expertise and their presumed commitment to resolving the crisis and restoring the conditions for normal democratic governance.

Technocratic interludes differ from straightforward military rule in that authority is formally vested in civilian technocrats rather than in the military institution, even where, as in Bangladesh's case, the military's political support is the effective foundation of the arrangement. They differ from ordinary caretaker or interim governments in that the technocrats who lead them typically have specific expertise relevant to the crisis being managed: economists during financial crises, legal experts during constitutional crises, public health professionals during health emergencies. And they differ from full-blown transitional governments, as experienced in post-conflict societies, in that they are explicitly temporary, designed to create the conditions for a return to normal democratic governance rather than to undertake comprehensive state reconstruction.

The comparative literature identifies several historical examples that share relevant features with the Bangladeshi case: the technocratic governments of Italy in the 1990s and early 2010s, when economists and central bankers, including Mario Monti and Carlo Azeglio Ciampi, assumed governmental leadership during financial crises; the caretaker governments of Thailand during the periods of military-influenced political transition; and the emergency governments of several Latin American countries during constitutional crises of the 1990s.

52.2 The Theory of Technocratic Governance: Epistemic and Democratic Dimensions

The philosophical justification for technocratic governance rests on an epistemic claim: that the management of complex policy problems requires specialized knowledge that elected politicians

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typically do not possess, and that in situations of acute crisis, the costs of implementing the wrong policy are too high to risk through the ordinary processes of democratic deliberation and electoral accountability. The technocrat, on this account, is not a substitute for democratic governance but a temporary provider of specialized competence during a period when normal democratic processes have failed or are suspended.

This epistemic justification is most compelling in domains of genuine technical complexity where the connection between policy decisions and outcomes is relatively clear and where expert consensus is relatively strong. Central banking is the paradigm case: monetary policy decisions require technical expertise in macroeconomics and financial systems that few elected politicians possess, and the consequences of getting monetary policy wrong, as illustrated by hyperinflation episodes in multiple countries, can be catastrophic. The institutional design of central bank independence reflects the acceptance of this epistemic justification within the framework of democratic governance.

But the epistemic justification for technocratic governance becomes much weaker when applied to the broader domain of governmental authority that a Chief Adviser exercises. The management of a national economy during a crisis does require genuine macroeconomic expertise of the kind that Fakhruddin Ahmed possessed. But the decisions about how to conduct an anti-corruption campaign, how to reform electoral institutions, how to manage political party reform, how to handle the competing claims of different social groups, and how to balance security requirements against civil liberties protections are not primarily technical questions with clear expert-determined answers. They are fundamentally political questions whose resolution requires not expertise but legitimacy, the authority that comes from having been chosen by and being accountable to the people whose interests are at stake.

The theoretical critique of technocratic governance developed by scholars including Michael Sandel and Roberto Unger emphasizes this point: the displacement of democratic deliberation by expert judgment, even when the experts are genuinely competent and genuinely committed to the public interest, involves a kind of political cost that the technocratic justification tends to understate. Democratic deliberation, on this account, is not merely instrumentally valuable as a mechanism for producing good policy outcomes. It is intrinsically valuable as a process of collective self-governance in which citizens exercise their agency as political subjects rather than being governed as beneficiaries of expert administration.

52.3 The Fakhruddin Model: Strengths and Limitations Reassessed

The preceding theoretical analysis provides the conceptual framework for a comprehensive reassessment of the Fakhruddin government's governance model, one that moves beyond both the hagiographic celebration of its achievements and the dismissive critique of its constitutional violations to engage with the genuinely complex questions that it raises.

The model's strengths were real and significant. Fakhruddin Ahmed brought to the Chief Adviser position an unusually deep expertise in macroeconomics, development finance, and institutional design that was directly relevant to the governance challenges Bangladesh faced in January 2007. His World Bank experience had given him both the technical knowledge to understand the

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institutional reforms that Bangladesh's governance required and the international relationships to secure the external support necessary for managing the economic and diplomatic dimensions of the transitional period. His personal integrity, which was consistently recognized even by critics of the caretaker government's constitutional validity, provided a credibility that no politician from either of the major parties could have brought to the position at that moment.

These strengths produced genuine achievements. The separation of the judiciary, the biometric voter registration system, the reformed election commission, and the credible 2008 elections were real institutional contributions that had lasting effects on Bangladesh's constitutional and democratic development. Even critics who emphasize the constitutional violations of the emergency period acknowledge these achievements as significant.

The model's limitations were also real and significant. The anti-corruption campaign, however popular in its initial stages, was conducted with inadequate attention to due process in ways that violated the rule of law principles that democratic governance requires. The attempt to engineer political party reform through the "minus-two" formula represented an overreach that went well beyond any plausible justification for technocratic governance and reflected a misunderstanding of the proper relationship between unelected technocratic authority and the choices of citizens and political parties. The extended duration of the emergency, well beyond the constitutionally mandated 90 days for caretaker governance, created an institutional precedent for the proposition that extraordinary governance arrangements can be extended indefinitely on the grounds of necessity, a precedent whose dangers were amply illustrated by the subsequent Hasina government's use of emergency-style powers through formally ordinary constitutional mechanisms.

52.4 The Technocratic Interlude in the Age of Democratic Backsliding

The conceptualization of the technocratic interlude as a distinctive constitutional category is particularly important in the current global context, in which democratic backsliding has become one of the most widely documented trends in comparative politics. The Freedom House, V-Dem, and Economist Intelligence Unit democracy indices have all documented consistent declines in democratic quality across a wide range of countries since the mid-2010s, and the mechanisms of democratic backsliding, particularly the use of electoral manipulation, judicial capture, and civil society repression to entrench incumbent parties, are well-documented.

In this context, the question of whether technocratic interludes can serve as effective responses to democratic backsliding is both theoretically important and practically urgent. Bangladesh's experience provides the richest available case study for examining this question, and its lessons are both instructive and cautionary.

The instructive lesson is that technocratic interludes can, under the right conditions, make genuine and lasting institutional contributions to democratic governance. The conditions that made the Fakhruddin government's institutional contributions possible included: the genuine technical expertise of the Chief Adviser and his team, the limited and specific nature of the institutional reforms that were pursued, the existence of a pre-existing institutional framework (the caretaker government system) that provided a degree of constitutional legitimacy for the

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arrangement, and the ultimate commitment to a return to electoral democracy that gave the transitional arrangement a defined endpoint.

The cautionary lesson is that even technocratic interludes with genuine technical competence and genuine democratic commitment create institutional costs, in the form of democratic accountability gaps, constitutional violations, due process failures, and precedents for extraordinary governance, that can outlast and in some respects undermine the institutional gains they produce. The durability of the Fakhruddin government's achievements depended entirely on the political will of subsequent democratic governments to maintain and build upon them, political will that proved inadequate under the Hasina government.

CHAPTER FIFTY-THREE: THE PHILOSOPHY OF CONSTITUTIONAL MOMENTS AND THE FAKHRUDDIN LEGACY

53.1 Ackerman's Theory of Constitutional Moments and Its Application

Bruce Ackerman's theory of constitutional moments, developed in his trilogy We the People, provides one of the most sophisticated frameworks available for understanding how fundamental constitutional change occurs and what gives it democratic legitimacy. Ackerman distinguishes between normal politics, conducted through the ordinary procedures of representative government, and constitutional politics, which occurs at rare "constitutional moments" when the people as a whole, rather than their ordinary representatives, mobilize to make fundamental choices about the character of their political institutions.

For Ackerman, constitutional moments are defined by three features: unconventionality, in the sense that they operate outside the ordinary procedural requirements of normal politics; higher lawmaking, in the sense that they produce changes of a more fundamental character than ordinary legislation; and popular sovereignty, in the sense that they are animated by a genuinely mobilized popular movement that claims to speak for the people as a whole rather than for any particular faction or interest group.

Applied to Bangladesh, Ackerman's framework suggests that the country has experienced several episodes that might be characterized as constitutional moments: the Liberation War of 1971, which established the constitutional foundations of the Bangladeshi state; the 1990 mass uprising that overthrew General Ershad and established the caretaker government convention; and the July 2024 uprising that overthrew the Hasina government and initiated the current constitutional reform process. The Fakhruddin caretaker period of 2007 to 2009, by contrast, was not a constitutional moment in Ackerman's sense: it was a managed institutional transition, authorized by military power and technical expertise rather than popular mobilization, that pursued specific institutional reforms within a framework of higher-law principles established by the constitution and its democratic commitments.

This Ackermanian analysis illuminates an important aspect of the Fakhruddin period's constitutional significance. The caretaker government's institutional reforms, however

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technically competent and practically beneficial, could not by themselves generate the kind of constitutional transformation that would create durable foundations for democratic governance. Such transformation requires the kind of popular political mobilization and broadly based constitutional deliberation that Ackerman's theory identifies as the hallmark of genuine constitutional moments. The relative fragility of the caretaker period's institutional achievements, which proved vulnerable to political reversal under the Hasina government, can be understood in Ackermanian terms as the consequence of institutional reforms that were designed and implemented without the sustained popular political investment that constitutional change of this fundamental character requires.

The July 2024 uprising, by contrast, represents a more genuine constitutional moment, one characterized by the mass popular mobilization, the cross-class and cross-regional character of the protests, and the fundamental character of the political change demanded. The constitutional reform process that followed the uprising, through the Yunus interim government and the July Charter process, was an attempt to translate the political energy of the constitutional moment into durable institutional design, the same challenge that faces all constitutional moments: how to convert revolutionary energy into constitutional form without losing either the democratic substance of the moment or the institutional quality of the reforms it produces.

53.2 Schmitt's State of Exception and Its Limits as Analytical Framework

Carl Schmitt's controversial concept of the state of exception provides another theoretical lens through which to analyze the Fakhruddin caretaker period, though one that requires careful critical engagement with its normative implications. Schmitt's famous proposition that "sovereign is he who decides on the exception" asserts that genuine sovereignty is revealed not in normal governance but in the capacity to suspend the normal legal order in moments of extreme necessity. The state of exception, for Schmitt, is the moment when the political, understood as the fundamental distinction between friend and enemy, asserts itself against the pretensions of liberal legalism to govern all situations through pre-established legal rules.

Applied to the Bangladesh situation of January 2007, Schmittian analysis would identify the declaration of the state of emergency and the appointment of the Fakhruddin government as a classic exercise of sovereign decision-making in the state of exception: the existing legal and constitutional framework had demonstrably failed to maintain political order, and the sovereign power of the military-backed emergency government asserted itself to fill the resulting void. The Fakhruddin government's governance, on a Schmittian account, was not legitimated by constitutional law but by the political necessity that the dysfunctional constitutional framework had created.

The limitation of Schmittian analysis for understanding the Fakhruddin period is precisely its normative framework, which treats the suspension of constitutional legality in states of exception as a natural and even necessary feature of political life rather than as a constitutional problem that requires justification and limitation. The Schmittian framework provides no resources for distinguishing between the suspension of constitutional norms in genuine emergencies and their suspension for political convenience, and it provides no criteria for determining when the exception should end and normal constitutional governance resume. Its application to the

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Bangladesh case would legitimize not only the Fakhruddin government's emergency period but also the Hasina government's decade-long state of de facto emergency rule, in which the formal constitutional framework was maintained but its democratic substance was systematically hollowed out.

The more adequate theoretical framework is one that takes seriously both the necessity of extraordinary governmental authority in genuine constitutional emergencies and the constitutional requirements that bound the exercise of such authority. This requires moving beyond Schmitt toward the kind of constitutional theory that engages seriously with the normative principles that distinguish legitimate constitutional governance from the mere exercise of political power.

53.3 Derrida on Law's Foundation: Force, Justice, and Constitutional Authority

Jacques Derrida's philosophical engagement with the foundation of law, particularly in his 1989 essay "Force of Law: The Mystical Foundation of Authority," provides a philosophical perspective on constitutional legitimacy that illuminates the paradoxes of Bangladesh's constitutional situation. Derrida argues that all law rests on an original act of force, a founding violence that cannot itself be justified by law since it precedes the law. The foundation of law is therefore "mystical" in the sense that it cannot be grounded in prior legal authority but must be traced to a moment of political decision that transcends the legal order it creates.

This Derridean insight, applied to Bangladesh, helps to explain the persistent instability of constitutional legitimacy in a country whose constitutional order has been repeatedly founded and refounded through acts that were themselves extralegal. The 1972 Constitution was founded on the liberation war, itself a revolutionary act that could not be justified by Pakistani constitutional law. The military coups of 1975 and subsequent periods refounded the constitutional order through acts that were explicitly unconstitutional by the standards of the 1972 Constitution. The Thirteenth Amendment's caretaker system was an attempt to provide constitutional foundations for institutional arrangements that had themselves emerged from extralegal political bargaining. And the July 2024 uprising and its constitutional aftermath represent the latest instance of an extralegal founding act seeking to give itself constitutional form.

The Derridean perspective suggests that Bangladesh's constitutional instability is not simply a consequence of institutional design failures or political culture deficiencies, though these are real and important factors. It is also a consequence of a deeper structural feature of the country's constitutional history: the repeated reliance on extralegal political acts as the foundations of constitutional order, acts that cannot be fully legitimated by the legal systems they create and that therefore leave those legal systems permanently vulnerable to challenge by subsequent political actors who claim the same founding authority for different political projects.

The implication of this analysis for Bangladesh's constitutional future is not nihilistic: it does not suggest that constitutional stability is impossible or that institutional reform is futile. Rather, it suggests that genuine constitutional stability requires not merely formal institutional improvement but the development of a political culture that treats constitutional limits as

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genuinely binding even in situations of political crisis, and that accepts the rule of law as a constraint on political action rather than as a resource to be used instrumentally in service of political goals.

CHAPTER FIFTY-FOUR: INTERNATIONAL DIMENSIONS: SOVEREIGNTY, ENGAGEMENT, AND THE FUTURE OF DEMOCRATIC SUPPORT

54.1 Bangladesh and the International Community: A Shifting Relationship

Bangladesh's relationship with the international community has been a constitutive feature of its constitutional development from the country's very foundation. The Liberation War of 1971 was itself shaped by international dimensions, including India's decisive military intervention, the United States' support for Pakistan during the Nixon administration, and the recognition of the new state by the international community as a precondition for its consolidation. Since independence, Bangladesh's development trajectory has been intimately connected to international engagement through development assistance, trade relationships, diaspora remittances, and the activities of international financial institutions.

The international dimension of the Fakhruddin caretaker period was substantial. International support for the caretaker government, expressed through continued development assistance, political recognition, and technical cooperation, was an important factor in sustaining the transitional arrangement through its two-year tenure. The international financial institutions' continued engagement with Bangladesh during the caretaker period provided macroeconomic stability, while bilateral donors' political recognition provided diplomatic legitimacy that compensated for the caretaker government's democratic deficit.

The post-2026 international dimension is similarly complex. The international community's assessment of the BNP government's democratic credentials will be an important influence on Bangladesh's access to development finance, trade preferences, and diplomatic relationships. The European Union's continued engagement with Bangladesh under the Generalized Scheme of Preferences Plus (GSP+), which provides preferential trade access conditional on respect for fundamental human rights and democratic principles, creates specific accountability incentives that will shape the BNP government's behavior in ways that purely domestic political dynamics might not.

54.2 The Evolution of International Democracy Support

The international democracy support industry, which includes bilateral democracy promotion programs, multilateral institutions such as the United Nations Development Programme, and civil society organizations such as the International IDEA and the National Democratic Institute, has undergone significant evolution in the two decades since the Fakhruddin period. The early optimism of the 1990s, in which democracy promotion was seen as a relatively straightforward matter of spreading the institutional models of Western democracies to post-communist and post-authoritarian states, has been tempered by the experience of failed democratization in multiple

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contexts, the rise of competitive authoritarianism as a durable political form, and the growing recognition that effective democracy support must be sensitive to specific political contexts rather than promoting universal institutional templates.

The theoretical developments in the democracy support literature have implications for how the international community should engage with Bangladesh's post-2026 constitutional moment. The shift from a "transitions paradigm," which assumed that all post-authoritarian states were on a path toward democratic consolidation, toward a more realistic assessment of the diverse trajectories that post-authoritarian states can follow, suggests that the international community should be cautious about celebrating Bangladesh's February 2026 elections as a consolidated democratic achievement when the longer-term trajectory remains highly uncertain.

At the same time, the democracy support literature's increasing emphasis on local ownership and nationally led reform processes suggests that external actors should be careful not to impose institutional templates from outside or to condition support on the adoption of specific institutional designs that may not be appropriate to Bangladesh's specific context. The most valuable form of international engagement is likely to be one that provides resources and expertise in response to specifically requested needs, that supports the development of local institutional capacity rather than substituting external capacity for it, and that maintains consistent standards for democratic governance while respecting the sovereign right of Bangladesh's people to determine the specific form their democratic institutions take.

54.3 Regional Dynamics: India, China, and the Geopolitics of Bangladesh's Constitutional Development

Bangladesh's constitutional development cannot be understood in isolation from the regional geopolitical context in which it is embedded. India, which shares a 4,156-kilometer border with Bangladesh and which has historically been the most influential external actor in Bangladeshi politics, has had complex and evolving relationships with successive Bangladeshi governments. The Indian government's reaction to the "1/11" transition of 2007 was reported as broadly supportive, reflecting India's preference for a stable Bangladesh capable of preventing the use of its territory for anti-Indian insurgent activity and its assessment that the caretaker arrangement was preferable to the political chaos that had preceded it.

The relationship between India and the Hasina government was particularly close throughout the 2009 to 2024 period, reflecting both historical connections between the Awami League and the Indian political establishment and the convergence of interests between India's security concerns and the Hasina government's domestic political needs. The Hasina government's cooperation with India on counterterrorism, on transit and connectivity issues, and on the management of the Rohingya refugee crisis from Myanmar generated significant Indian political and diplomatic investment in the continuation of Hasina's governance.

The political change of August 2024, which brought down the Hasina government and installed the Yunus interim administration, therefore represented a significant disruption in India-Bangladesh relations. The Yunus government's cooler relationship with India, and the BNP's historically more nationalist and less India-accommodating political stance, created concerns in

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New Delhi about the direction of the bilateral relationship that would shape India's posture toward Bangladesh's constitutional development in the post-2026 period.

China's growing engagement with Bangladesh, expressed through Belt and Road Initiative investments, development finance, and diplomatic relationships, adds an additional dimension to the geopolitical context of Bangladesh's constitutional development. The competition between Indian and Chinese influence in Bangladesh mirrors broader regional dynamics in South Asia and the Indian Ocean, and it creates both opportunities and risks for Bangladesh's governance quality: opportunities because competition for influence can increase the resources available for development and provide Bangladesh with greater room for diplomatic maneuver, and risks because the competition for influence can become a factor that reinforces authoritarian tendencies if external actors prioritize strategic relationships over democratic governance standards.

54.4 The Rohingya Crisis and Its Constitutional Implications

Bangladesh's protracted hosting of more than one million Rohingya refugees from Myanmar represents one of the most significant humanitarian and governance challenges that the country faces, and it has constitutional implications that deserve attention in any comprehensive treatment of Bangladesh's democratic consolidation challenges. The Rohingya refugee crisis, which expanded dramatically following the Myanmar military's 2017 campaign of violence in Rakhine State, has placed enormous strain on Bangladesh's resources, on its social fabric in the Cox's Bazar region where the refugee camps are located, and on its diplomatic relationships with Myanmar, China, and the international community.

The constitutional implications of the Rohingya crisis operate at several levels. At the most immediate level, the governance of the refugee camps requires the exercise of substantial executive authority in ways that create potential for both corruption and human rights violations, creating accountability challenges that test the quality of Bangladesh's rule of law institutions. At a broader level, the Rohingya crisis has been used by successive Bangladeshi governments, including both the Hasina government and the Yunus interim government, as a justification for security measures that have implications for civil liberties and due process in the Cox's Bazar region more broadly.

At the deepest level, the Rohingya crisis raises fundamental questions about the nature of citizenship, sovereignty, and human rights that connect to the philosophical foundations of Bangladesh's constitutional order. Bangladesh's own history of statelessness and forced displacement, rooted in the Partition of 1947 and the Liberation War of 1971, creates a particular historical resonance with the Rohingya people's situation that some Bangladeshi scholars and civil society activists have argued should inform a more generous and principled approach to the rights of displaced persons than the Bangladesh government, under either the Hasina or Yunus administrations, has actually adopted.

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CHAPTER FIFTY-FIVE: THE FUTURE OF BANGLADESHI CONSTITUTIONALISM: PROSPECTS, CHALLENGES, AND THEORETICAL REFLECTIONS

55.1 Constitutional Consolidation or Renewed Crisis?

The question that looms over any serious assessment of Bangladesh's constitutional future in mid-2026 is whether the post-election moment represents the beginning of genuine constitutional consolidation or merely another episode in the recurring cycle of democratic hope followed by authoritarian regression that has characterized Bangladesh's constitutional history since independence. The theoretical frameworks examined in the preceding chapters do not provide a simple answer to this question, because the outcome depends on contingent political choices and institutional developments that cannot be determined in advance by any theory.

What can be said, with a degree of analytical confidence grounded in the theoretical literature and the historical record, is that genuine constitutional consolidation in Bangladesh requires the sustained convergence of several factors: the political will of the BNP government to implement the constitutional reforms it endorsed, at least formally, through the July Charter process; the development of institutional capacity in the judiciary, the anti-corruption commission, the election commission, and the other oversight bodies that are essential for the routine functioning of constitutional governance; the engagement of civil society, media, and academic institutions in maintaining public pressure for democratic accountability; the development of political norms that lead all major parties, not just the governing party, to treat democratic competition as a cooperative rather than zero-sum enterprise; and the maintenance of the international relationships that provide both resources and accountability incentives for Bangladesh's governance.

The immediate post-election context provides grounds for both cautious optimism and genuine concern. On the optimistic side: the elections themselves were conducted with a degree of procedural integrity that had not been seen since 2008; the peaceful transfer of power from the Yunus interim government to the BNP government demonstrated the functioning of a basic democratic norm; the July Charter's reform agenda, however contested in its implementation details, provides a comprehensive framework for addressing the institutional deficiencies that have historically enabled authoritarian governance; and the continuing engagement of international institutions and civil society organizations provides accountability mechanisms that were not available during earlier periods of democratic regression.

On the concerning side: the exclusion of the Awami League from the electoral process creates a legitimacy deficit that could fuel renewed political polarization; the BNP's refusal to take the second parliamentary oath raises serious questions about its commitment to the constitutional reform agenda that the referendum endorsed; the ongoing litigation challenging the validity of the referendum mechanism threatens to undermine the constitutional legitimacy of the reform process before it has even begun; and the deep structural problems of Bangladesh's political culture, in which partisan loyalty and family dynasty tend to override constitutional principle, show no signs of fundamental transformation.

55.2 Constitutional Design and Its Limits: The Enduring Challenge

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The experience of Bangladesh's constitutional development, examined across the five parts of this textbook, demonstrates with particular clarity one of the fundamental insights of contemporary constitutional theory: that constitutional design is necessary but not sufficient for democratic governance. Constitutions can create institutional frameworks that facilitate good governance and make authoritarian abuse more difficult, but they cannot by themselves generate the political will, the social norms, and the cultural dispositions that democratic governance ultimately requires. The relationship between constitutional text and constitutional practice is always mediated by political actors, social institutions, and cultural values whose behavior cannot be fully determined by formal legal rules.

The implication of this insight for Bangladesh's constitutional reform agenda is not that the July Charter's institutional proposals are unimportant, because they are genuinely important and their implementation matters enormously. The implication is rather that the institutional proposals must be understood as necessary but not sufficient conditions for democratic consolidation, and that the deeper work of democratic development, the cultivation of political norms, the development of accountable institutions, the building of a political culture that treats democratic competition as legitimate and worthwhile, is work that must be done continuously and cannot be accomplished by any single act of constitutional design.

This deeper work requires several kinds of sustained effort that go beyond formal constitutional amendment. It requires the development of genuine party democracy within the major political parties, so that party leadership is determined by internal democratic processes rather than by family succession and personal loyalty networks. It requires the cultivation of genuine judicial and prosecutorial independence, not merely through formal appointment procedures but through the development of professional cultures within the legal institutions that treat independence as a constitutive professional value. It requires the development of a genuine free press that is neither captured by partisan interests nor intimidated into self-censorship by political or economic pressure. And it requires the development of a civil society strong enough to maintain public accountability pressure on governments of all political colors.

55.3 The Young Generation and Bangladesh's Democratic Future

Any assessment of Bangladesh's constitutional future would be incomplete without attention to the generation of young Bangladeshis whose political mobilization drove the 2024 uprising and whose ongoing political engagement will shape the country's democratic trajectory in the decades ahead. This generation, which grew up in the environment of the Hasina government's progressive authoritarianism, demonstrated in July and August 2024 a remarkable capacity for political courage, organizational creativity, and moral clarity that suggests a genuine transformation in the country's political culture is underway, or at least potentially available.

The political sociology of the 2024 uprising, studied by scholars from multiple disciplinary perspectives, reveals a movement that was in important respects different from the student and mass movements that have characterized Bangladesh's political history. It was genuinely cross-class and cross-religious, mobilizing not only university students but also secondary school students, workers, and middle-class professionals. It was geographically broad, extending from Dhaka to district towns across the country. It was organizationally flexible, relying on social

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media coordination and decentralized leadership rather than the traditional party-based organizational structures. And it was ideologically complex, combining demands for specific policy changes, such as the reform of the civil service quota system that triggered the initial protests, with broader demands for systemic political and institutional change.

The National Citizens' Party, formed from the leadership of the student movement, represents an attempt to translate this movement energy into organized political participation. But the party's early trajectory, and particularly its internal tensions over the pace of constitutional reform and its relationship with the BNP and Jamaat, suggests that the transition from movement to institution is proceeding with the difficulties that this transition always involves. The organizational and ideological challenges of building a political party that can maintain the moral clarity and cross-partisan appeal of a social movement while operating within the competitive and often corrosive environment of electoral politics are formidable, and the NCP's success or failure in navigating these challenges will be an important factor in Bangladesh's political development.

55.4 Technology, Democracy, and Constitutional Governance

Bangladesh's constitutional future is also shaped by the rapidly evolving relationship between digital technology and democratic governance, a relationship that presents both opportunities and risks that deserve careful analysis. The same social media platforms and digital communication tools that enabled the 2024 uprising's organizational effectiveness can also be used for disinformation, political polarization, and the kind of coordinated inauthentic behavior that has become a recognized threat to democratic governance in multiple countries.

Bangladesh has been an early and significant site of social media's political influence, both in its positive forms, as demonstrated by the 2024 uprising's use of Facebook, TikTok, and other platforms for organization and communication, and in its negative forms, as demonstrated by the extensive use of social media for political disinformation, hate speech, and the manipulation of public opinion during multiple electoral cycles. The governance of digital information environments is therefore a genuinely important dimension of Bangladesh's democratic consolidation challenge, one that requires both regulatory frameworks and institutional capacity that the current constitutional reform agenda only partially addresses.

The July Charter's proposals for media freedom and regulation, including strengthened protections for press freedom and reformed frameworks for media ownership and editorial independence, represent a partial response to these challenges. But the specific challenges of digital platform governance, algorithmic amplification of divisive content, and the use of digital tools for coordinated manipulation of public opinion require more targeted regulatory responses that neither the Charter nor the preceding constitutional reform commissions have comprehensively addressed.

CHAPTER FIFTY-SIX: FINAL SYNTHESIS: FAKHRUDDIN AHMED IN THE CONSTITUTIONAL IMAGINATION OF BANGLADESH

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56.1 The Man, the Moment, and the Historical Judgment

After five volumes of analysis, biography, legal examination, comparative study, and philosophical reflection, we are finally in a position to offer a considered historical judgment about Fakhruddin Ahmed and his place in Bangladesh's constitutional history. This judgment must be simultaneously historical, in the sense of assessing what he actually did and what consequences his actions had; philosophical, in the sense of evaluating his governance against the principled criteria that democratic and constitutional theory provides; and prospective, in the sense of drawing from his experience lessons that are relevant to Bangladesh's constitutional challenges in the present and future.

The historical verdict is one of qualified and conditional achievement. Fakhruddin Ahmed served as Chief Adviser during one of the most difficult periods in Bangladesh's post-liberation history, brought to that role an intellectual seriousness and professional competence that were genuinely exceptional, and produced a set of institutional reforms whose positive effects, particularly in electoral administration, judicial structure, and anti-corruption institutional design, outlasted his tenure and contributed meaningfully to Bangladesh's institutional development. The 2008 elections, which he oversaw, remain the most credible in Bangladesh's history and set a standard against which subsequent elections have been measured and found wanting.

At the same time, his tenure involved genuine constitutional violations, particularly the extended duration of the emergency period, that cannot be excused on grounds of necessity alone. The anti-corruption campaign, however popular, compromised due process standards in ways that violated the rule of law principles that constitutional governance requires. The attempt to engineer political party reform through the "minus-two" formula represented a misuse of the caretaker government's extraordinary authority. And the military's political role, which was the effective foundation of the caretaker government's authority, created institutional precedents for civil-military relations that have had ambivalent long-term consequences.

The philosophical verdict is similarly mixed. Fakhruddin Ahmed governed with genuine integrity and genuine commitment to the public interest, qualities that distinguish his tenure from the self-serving authoritarianism of the Hasina government that followed it. He understood, as his post-tenure interviews and public statements have demonstrated, the constitutional costs of the arrangements under which he governed, and he did not claim more constitutional authority than his position required. But his governance was necessarily limited by the philosophical tensions inherent in technocratic caretaking: the tension between epistemic authority and democratic legitimacy, between the institutional reforms that expert judgment identified as necessary and the democratic consent that those reforms required but could not, under the circumstances, obtain.

The prospective verdict is that the Fakhruddin period's most important legacy is not its specific institutional achievements, important as those are, but the conceptual and empirical case study it provides for thinking about the possibilities and limits of technocratic governance as a response to democratic crisis. Bangladesh in 2026, navigating the challenges of post-election constitutional consolidation, can draw on this case study for lessons about what technocratic

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governance can achieve, what it cannot achieve, and what institutional designs and political commitments are necessary to make its achievements durable.

56.2 The Institutional Legacy: What Endures

The assessment of the Fakhruddin legacy's institutional durability requires distinguishing between different categories of institutional change, each of which has a different relationship to subsequent political developments.

The first category consists of constitutional text changes, formal amendments to the constitutional document that survived subsequent changes of government. The caretaker government's separation of the judiciary, implemented through executive orders rather than constitutional amendment, fell into a grey area: it was formally operational as of the 2011 judgment that simultaneously declared the caretaker system unconstitutional and condoned the caretaker government's actions. The constitutional amendments proposed in the July Charter, if implemented, would create formal textual changes in the areas of executive term limits, judicial independence, and electoral administration that would be more resistant to subsequent political reversal.

The second category consists of institutional structural changes, modifications to the organizational design of state institutions that persist beyond particular governments. The biometric voter registration system, established during the Fakhruddin period, represents a clear instance of a structural change that proved durable across subsequent changes of government, surviving the Hasina government's selective manipulation of electoral administration and proving its value in the credible administration of the February 2026 elections. The formal separation of the subordinate judiciary, while imperfectly implemented in practice, represented a structural change that at least established the institutional framework for genuine judicial independence.

The third category consists of informal institutional changes, shifts in the expectations, norms, and practices of institutional actors that are not codified in any formal rule but that shape institutional behavior in important ways. The Fakhruddin period may have contributed to some informal institutional changes in this sense, particularly in the Election Commission, where the experience of administering genuinely free elections in 2008 may have contributed to a professional culture of electoral integrity that partially constrained the Hasina government's manipulation of subsequent elections.

The fourth category consists of political culture changes, shifts in the broader political norms and values that shape how political actors relate to constitutional institutions and processes. The evidence for significant political culture change attributable to the Fakhruddin period is the most ambiguous of all: the Hasina government's progressive undermining of democratic institutions after 2009 suggests that any political culture change toward acceptance of constitutional constraint that the caretaker period may have fostered was shallow and easily reversed.

56.3 The Theoretical Contribution: From Biography to Concept

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The examination of Fakhruddin Ahmed's career and tenure through the theoretical frameworks developed across the five parts of this textbook has generated a number of conceptual contributions to the literature on interim governance, democratic transitions, and constitutional theory that go beyond the specific biographical case.

The concept of the technocratic interlude, developed most fully in Chapter 52, provides a distinctive analytical category for a form of governmental arrangement that is recognizable in multiple historical contexts but has not previously been systematically theorized. By distinguishing the technocratic interlude from other forms of extraordinary governance, including military rule, ordinary caretaker government, and full transitional administration, and by identifying the specific conditions under which technocratic interludes can make genuine contributions to democratic development, this textbook provides a conceptual tool that can be applied to understanding similar arrangements in other countries and other historical periods.

The analysis of the retrospective constitutionalism that the Bangladesh Supreme Court engaged in through its 2025 and 2026 adjudications illuminates a form of constitutional practice that is becoming increasingly significant as courts in multiple countries are called upon to evaluate historical constitutional moments that their predecessors either failed to address or addressed inadequately. The theoretical challenges of retrospective constitutionalism, including the difficulty of applying subsequently developed doctrinal frameworks to past events and the relationship between retrospective adjudication and ongoing constitutional politics, are challenges that constitutional courts in multiple jurisdictions will face, and Bangladesh's experience provides rich material for comparative constitutional analysis.

The examination of the relationship between technocratic governance and democratic legitimacy, developed through engagement with the philosophical traditions of natural law, deliberative democracy, Rawlsian liberalism, and Derridean deconstruction, contributes to the philosophical literature on democratic theory by demonstrating the specific ways in which the Bangladesh case both confirms and complicates the theoretical frameworks that have been developed primarily from the experience of established Western democracies.

CHAPTER FIFTY-SEVEN: CONCLUSION: THE UNFINISHED CONSTITUTION AND THE FUTURE OF DEMOCRATIC BANGLADESH

57.1 Constitutional Incompleteness as a Permanent Condition

The title of this concluding chapter, "The Unfinished Constitution," is not intended to suggest that Bangladesh's constitution is defective in some rectifiable sense, or that a sufficiently comprehensive process of constitutional reform could produce a completed and final constitutional design. Rather, it reflects one of the deepest insights of modern constitutional theory: that constitutions are never finished in the sense of being fully adequate to the political and social challenges they must address, and that the project of constitutional governance is a permanent process of interpretation, adaptation, and reform rather than a project with a definite end point.

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This insight, developed in different ways by scholars including Karl Klare in his work on transformative constitutionalism, Frank Michelman in his analysis of the relationship between constitutionalism and democracy, and Roberto Unger in his theory of democratic experimentalism, has particular resonance for Bangladesh, whose constitutional history has been characterized by repeated constitutional moments, each of which has sought to definitively resolve the constitutional questions that preceding arrangements had failed to answer, and each of which has itself generated new constitutional questions and new institutional challenges.

The 1972 Constitution sought to constitutionalize the principles of the Liberation War, establishing a parliamentary democracy committed to nationalism, socialism, democracy, and secularism. The military amendments of the late 1970s and 1980s sought to constitutionalize a different vision of Bangladesh, more Islamic in its religious orientation and more Bangladeshi-nationalist in its political identity. The Thirteenth Amendment sought to constitutionalize the caretaker government convention as a mechanism for ensuring electoral integrity. The Fifteenth Amendment sought to constitutionalize a version of the 1972 constitutional vision while simultaneously eliminating the institutional safeguard that the Thirteenth Amendment had established. And the July Charter of 2025 seeks to constitutionalize the lessons of the 2024 uprising, establishing new institutional safeguards against the authoritarian consolidation that the Hasina period demonstrated was possible within Bangladesh's formal constitutional framework.

Each of these constitutional moments has been understood by its authors as a definitive constitutional settlement, a final resolution of the constitutional questions that had plagued the preceding arrangement. And each has proven to be not a settlement but a new starting point for constitutional contestation. This pattern is not unique to Bangladesh. It is a general feature of constitutional development in all societies, reflecting the fundamental truth that constitutional questions cannot be finally settled because they are questions about the proper distribution of political power and the proper protection of fundamental rights in a society whose power relations and rights challenges are continuously changing.

57.2 The Lessons for Bangladesh: Ten Propositions

Drawing on the full analysis of the preceding five parts of this textbook, we can articulate ten propositions about Bangladesh's constitutional development that represent the main lessons of the Fakhruddin experience and its aftermath for Bangladesh's constitutional future.

The first proposition is that institutional design matters, but it is not determinative. Formal constitutional arrangements can facilitate or impede good governance, but they cannot by themselves generate the political will, the social norms, and the institutional cultures that democratic governance requires. The history of Bangladesh's constitutional development demonstrates repeatedly that formal institutional design can be undermined by political actors determined to use state power for partisan purposes.

The second proposition is that the basic structure doctrine is an important but contested constitutional instrument. The Bangladesh Supreme Court's identification of free and fair elections as a feature of the constitutional basic structure provides an important doctrinal foundation for constitutional protection of democratic governance. But the specific content of the

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basic structure, and the institutional mechanisms for its protection, remain subjects of ongoing constitutional contestation.

The third proposition is that technocratic governance can make genuine contributions to democratic development under specific conditions, but these contributions are inherently limited by the democratic accountability deficit that technocratic governance involves. The Fakhruddin period's institutional achievements demonstrate what technocratic governance at its best can contribute. The subsequent erosion of those achievements demonstrates the limitations of contributions that cannot draw on the sustained political support that democratic accountability generates.

The fourth proposition is that anti-corruption enforcement requires institutional independence, adequate resources, and political will simultaneously. The Bangladesh Anti-Corruption Commission's history demonstrates that having one or two of these requirements without the third produces either institutional capture (when independence is absent), institutional paralysis (when resources are absent), or selective enforcement (when political will is absent or partisan).

The fifth proposition is that electoral integrity requires both formal institutional safeguards and the ongoing commitment of political actors to accept unfavorable electoral outcomes. The biometric voter registration system and the reformed election commission provide formal safeguards. The commitment of political actors requires the development of political norms that treat democratic competition as legitimate even when its outcomes are unfavorable.

The sixth proposition is that judicial independence is a cumulative institutional achievement that requires sustained support from multiple sources: formal appointment procedures, adequate resources, professional culture within the legal community, and public respect for judicial authority. The Bangladesh judiciary's history demonstrates how quickly judicial independence can erode when any one of these supporting factors is withdrawn.

The seventh proposition is that the civil-military relationship is a structural feature of Bangladesh's political system that cannot be adequately addressed by constitutional text alone. Genuine civilian control of the military requires both formal institutional mechanisms and a political culture that treats military political intervention as illegitimate regardless of the political circumstances that might seem to justify it.

The eighth proposition is that women's political representation requires structural changes in political party culture, not merely formal quotas or reserved seats. The consistently low levels of women's candidacy in Bangladesh's elections, including the 2026 elections, despite decades of women's leadership at the very summit of political power, demonstrate the inadequacy of formal approaches to gender equality in politics without corresponding attention to the party-level and social conditions that determine who can practically participate in political life.

The ninth proposition is that international engagement with Bangladesh's constitutional development is most valuable when it combines consistent standards for democratic governance with genuine respect for national ownership of the reform process, providing resources and

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expertise in response to specifically requested needs rather than imposing institutional templates from outside.

The tenth proposition is that Bangladesh's constitutional future ultimately depends not on any particular institutional design or any particular political moment, but on the gradual development of a democratic political culture in which the institutions of constitutional governance are respected as legitimate constraints on political action, and in which democratic competition is accepted as a legitimate and ultimately beneficial process of collective self-governance. This cultural development is the work of generations, not of elections or constitutional amendments alone.

57.3 Fakhruddin Ahmed: A Final Portrait

Any biography must ultimately return to its subject as a human being rather than a constitutional symbol or a political category. Fakhruddin Ahmed, born in the village of Nagarkandi on 1 May 1940, was a man of exceptional intelligence, deep learning, genuine integrity, and characteristic modesty who found himself, at the age of 66, placed by the extraordinary contingency of history in a position that would have tested the capacities of far more experienced political actors.

He brought to that position everything that his remarkable career had equipped him to bring: the economist's discipline in analyzing complex problems, the World Bank official's experience of institutional challenges across multiple countries and contexts, the central banker's understanding of the relationship between institutional design and economic performance, and the civil servant's appreciation of the gap between policy intention and implementation reality. He governed with these tools as best he could, in circumstances that no institutional design or intellectual formation could fully have prepared him for.

He was neither a saint nor a visionary. He made mistakes, particularly in the anti-corruption campaign's disregard for due process and in the attempt to engineer political party reform through the "minus-two" formula. He was constrained by the military support on which his authority depended in ways that limited his freedom of action and compromised his institutional independence in important respects. He was, ultimately, a technocrat asked to do a political job, and the limitations of technocratic governance were inevitably reflected in the limitations of his tenure.

But he was also a man who, when placed in an extraordinary position under extraordinary circumstances, brought to bear a level of professional competence, personal integrity, and commitment to constitutional values that did credit to himself and to the country he served. The institutions he left behind, imperfect as they were, provided foundations that subsequent governments, at their worst, failed to destroy and that, at their best, have built upon. The elections of December 2008, which he presided over, set a standard for democratic conduct that Bangladesh has been trying, with very mixed success, to recover and maintain ever since.

The full assessment of his legacy must wait for the long arc of Bangladesh's constitutional history to reveal itself more fully. What can be said now, with confidence grounded in the analysis of the preceding five volumes, is that Fakhruddin Ahmed matters to Bangladesh's

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constitutional story: not as a savior, not as a hero of constitutional rectitude, but as a serious man who, in a time of serious crisis, did serious work with the tools he had available, and whose work, evaluated honestly and comprehensively, contributed more to Bangladesh's democratic development than those who condemn him as a military puppet acknowledge, and created more institutional costs than those who celebrate him as a constitutional reformer are always willing to admit.

57.4 Bangladesh Looks Forward: The Constitutional Promise of 2026 and Beyond

As Bangladesh enters the post-election period of 2026 with a newly elected BNP government, a constitutional reform agenda endorsed by popular referendum, and an international community watching with cautious interest, the question that this textbook's comprehensive analysis ultimately poses is both simple and profound: will this time be different?

The theoretical frameworks examined across five parts of this textbook all point toward conditional answers. Yes, it can be different, if the BNP government demonstrates genuine commitment to implementing the constitutional reform agenda. Yes, it can be different, if the judiciary develops genuine independence and the institutional capacity to enforce constitutional constraints on governmental power. Yes, it can be different, if civil society maintains its post-uprising vitality and refuses to be coopted or suppressed by the new political order. Yes, it can be different, if the political parties develop internal democracy and the capacity to accept unfavorable electoral outcomes without resorting to institutional subversion.

But the history of Bangladesh's constitutional development also provides grounds for caution. The pattern of institutional achievement followed by political reversal, of democratic hope followed by authoritarian regression, of formal constitutional reform followed by informal institutional capture, is deeply embedded in Bangladesh's political history. Breaking this pattern requires not merely better constitutional design but a deeper transformation of political culture that cannot be produced by any single governmental decision or constitutional amendment.

The student generation whose uprising drove the 2024 revolution carries the heaviest responsibility for this cultural transformation, and the heaviest hope. They demonstrated in July and August 2024 that the political culture of passive acceptance of authoritarian governance is not fixed or permanent, that ordinary Bangladeshi citizens can demand and, at enormous personal cost, achieve accountability from governments that have abandoned constitutional principles. Whether that demonstration of civic courage can be translated into the sustained institutional engagement and the patient cultivation of democratic norms that genuine consolidation requires is the great open question of Bangladesh's constitutional future.

This textbook has attempted, across five volumes and 57 chapters, to provide the intellectual resources necessary for understanding that question in all its complexity: the biographical resources of Fakhruddin Ahmed's remarkable life, the constitutional resources of Bangladesh's legal tradition, the comparative resources of global experience with democratic transitions and technocratic governance, the philosophical resources of the great traditions of political thought, and the contemporary resources of the latest scholarship on democratic theory, constitutional law, and political development. It is offered in the spirit of the great development economist's

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maxim that Fakhruddin Ahmed himself embodied: that systematic knowledge, disciplined analysis, and patient institutional competence, applied consistently and with genuine commitment to the public interest, can make a positive difference to the lives of ordinary people, even in the most difficult of circumstances.

The story of Bangladesh's constitutional development, like the story of any democracy, is ultimately the story of its people, their aspirations, their courage, and their willingness to persist in the project of self-governance even when that project is difficult, costly, and uncertain. The Constitution of Bangladesh, whoever writes its next chapter, will be only as good as the political will and civic culture that sustain it. That will and that culture are being built, slowly and imperfectly, in the streets of Dhaka and in the villages of Munshiganj and across the length and breadth of a remarkable, resilient, and constitutionally ambitious nation.

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